

FIRST DIVISION

[G.R. No. 143514, August 08, 2002]

**HON. ANDREW B. GONZALES, IN HIS CAPACITY AS SECRETARY
OF THE DEPARTMENT OF EDUCATION CULTURE AND SPORTS,
PETITIONER, VS. DR. LILIOSA R. GAYTA, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Respondent Dr. Liliosa R. Gayta was the Division Superintendent of Schools for Lanao del Norte. On March 5, 1999, she received from petitioner Andrew B. Gonzales, then Secretary of the Department of Education Culture and Sports (DECS), a "FORMAL CHARGE"^[1] based on a motu proprio complaint for Gross Misconduct, Oppression and Conduct Grossly Prejudicial to the Best Interest of the Service, docketed as Administrative Case No. 99-058. The pertinent portions of the formal charge read:

1. That you scolded and caused the transfer of **Mrs. Teresita O. Alborido** from her previous position as Clerk I in the Division Office of Lanao del Norte, for her being a suspected supporter of the Complainants in your case at the Office of the Ombudsman with docket number OMB-MIN-98-0407;
2. That you imposed the penalty of Suspension for three (3) months without pay on Mr. Adonis S. Dayondon in spite of the fact that no Formal Investigation was even held and that a Superintendent has no power to decide an administrative case and impose a penalty. Under the law and pertinent issuances only the Secretary (Exec. Order No. 292, Book V, Sec. 47 ^[2]) and the Regional Directors (MECS Order No. 48, s 1986 [2, c, 16]) have the power to decide administrative cases involving employees in the Department.

Wherefore, you are hereby required to answer in writing and under oath, the abovementioned charges within a period of not less than seventy-two (72) hours but not more than five (5) days from receipt hereof. x x x.^[2]

Along with the formal charge, petitioner placed respondent under preventive suspension for 90 days pending investigation, counted from March 4, 1999, the date of receipt of the Order, until June 2, 1999.^[3]

On March 5, 1999, a day after respondent's receipt of the Formal Charge, she filed an Urgent Motion for Reconsideration.

Subsequently, in an effort to expedite the proceedings of the case against her, respondent sought the help of Director Editha M. De La Peña of the "*Mamamayan Muna, Hindi Mamaya Na*" Operations Unit of the Civil Service Commission, who wrote a letter to the DECS requesting for an early resolution of respondent's case.^[4] In a letter dated April 7, 1999, respondent requested an early setting of her case for hearing.^[5]

On May 3, 1999, petitioner, treating respondent's Motion for Reconsideration as answer to the formal charge, declared the same to be unsatisfactory. An investigating committee of three was thereafter formed and the case was set for pre-trial conference on May 24, 1999.

At the pre-trial conference, the Committee Chairman noted that respondent was not furnished a copy of Mr. Adonis S. Dayondon's complaint and that no complaint was filed by Mrs. Teresita O. Alborido. Petitioner contended that it was not necessary to furnish respondent with said complaints because the charges against her were based on a motu proprio complaint signed by petitioner himself. The Committee Chairman, however, directed the parties to submit their position papers in order to determine if there was compliance with the DECS Rules of Procedure, and ordered the resetting of the pre-trial conference to July 28-29, 1999.^[6]

On June 3, 1999, after the expiration of the 90-day preventive suspension, respondent reassumed her position. However, respondent subsequently received a copy of an Order dated June 4, 1999 from petitioner, moving the completion of her preventive suspension from June 2, 1999 to August 6, 1999, to wit:

This refers to the case of Respondent Liliosa R. Gayta whose ninety (90) day preventive suspension after the date of its effectivity on March 4, 1999 is supposed to be completed on June 2, 1999. However, since it was the respondent who caused the delay in the disposition of the case by moving for the re-scheduling of the pre-conference hearing to July 28-29, 1999 during the hearing of the Investigation Committee on May 24, 1999 said preventive suspension period shall be completed only nine (9) days after July 28, 1999 or on August 6, 1999 as provided for under Sec. 3, Chapter VIII of DECS Order No. 33, s. 1999.

SO ORDERED.^[7]

Aggrieved, respondent filed a petition for certiorari with the Court of Appeals, contending that the extension of her preventive suspension beyond the 90-day period was illegal inasmuch as the delay in the disposition of the administrative case was not due to her fault, negligence or petition.

On February 15, 2000, the petition was granted and the assailed Order of petitioner was set aside. The dispositive portion thereof reads:

WHEREFORE, the petition is hereby GRANTED. Respondent's Order of June 4, 1999 is hereby NULLIFIED. Petitioner is, therefore, entitled to salaries and other emoluments due her as Division Superintendent of Schools for Lanao del Norte effective June 3, 1999 until the expiration of her preventive suspension, as extended, without prejudice to the outcome of [the] administrative case filed against her.

SO ORDERED.^[8]

Petitioner's motion for reconsideration was denied. Hence, the instant petition.

The issue to be resolved in this petition is whether or not respondent unlawfully delayed the disposition of her administrative case, thus justifying the non-inclusion of the period of delay in the computation of her 90-day preventive suspension as

provided in Sec. 3, Chapter VIII, of DECS Order No. 33, s. 1999 (DECS Rules of Procedure).[9] Said provision states:

Section 3. **Ninety-day period.** – When the Administrative Disciplinary Case against the respondent under preventive suspension is not finally decided by the Disciplining Authority within the period of ninety (90) calendar days after the date of effectivity of his or her preventive suspension, he or she shall be automatically reinstated in the service. Provided, however, that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar-day period of preventive suspension.

The law considers the period of ninety (90) days as enough time for the investigation and adjudication of an administrative case, counted from the date of suspension of the respondent. This will include not only the filing of required or permitted pleadings and the reception of testimonial, documentary and object evidence, but also the consideration and resolution of incidental motions filed in good faith, with no intent to delay the disposition of the case. The investigating officer is expected to exert and maintain control of the case to ensure, within the time thus appointed, the orderly and full ventilation of the parties' positions and the expeditious progress and ultimate adjudication of the proceeding. If the investigating officer fail in this function and is thus unable to decide the case within ninety (90) days, or the difficulty or complexity of the case, or other fortuitous cause, precludes decision thereof within said period, reinstatement of the suspended respondent becomes mandatory. On the other hand, the law is clear that when the delay in the disposition of the case results from the suspended respondent's (1) fault, (2) negligence or (3) petition, the period of such delay is not counted in the computation of the 90-day period.[10]

In the case at bar, petitioner holds respondent accountable for the delay in the disposition of the subject administrative case. Contrary to petitioner's claim, however, the Court finds that it was in fact the office of the DECS that caused the delay. As early as March 4, 1999, respondent filed her Motion for Reconsideration of the Formal Charge and the Order of Suspension, which the petitioner treated as her answer pursuant to Civil Service Commission Resolution No. 94-0521, Section 21 (as amended by CSC Resolution No. 98-0683).[11] The records reveal that despite the requests of respondent for an expeditious disposition of her case, petitioner acted on her answer only on May 3, 1999 and set the preliminary conference more than sixty (60) days from the date of receipt by respondent of the formal charge, or only on May 24, 1999. This is clearly contrary to the policy of speedy adjudication of administrative cases. Pertinent provisions of Civil Service Commission Resolution No. 94-0521, provide:

Section 21. Formal Charge. – x x x. The respondent shall be given at least seventy-two (72) hours from receipt of said formal charge to submit his answer under oath x x x.

The Commission shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If any of these pleading is interposed by the respondent the same shall be considered as an answer and shall be evaluated as such (As amended by MC No. 16, s. 1998)