Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-47191. June 27, 1978]

ARTURO ACOLOLA, *petitioner, vs.* **FRANCISCO S. TANTUICO, JR. Acting Chairman, Commission on Audit, General Auditing Office and HORACIO A. MARTINEZ,** *respondents.*

SYLLABUS

ADMINISTRATIVE LAW; CIVIL SERVICE; SUMMARY DISMISSAL; WHEN MAY BE IMPOSED.— "It is indisputable that the summary dismissal of petitioner by respondent Chairman of the Commission on Audit, pursuant to the aforequoted provision of Presidential Decree No. 807 was premised, on the fact that petitioner was caught red-handed by agents of the Philippine Constabulary in the act of receiving and having in his possession ₱2,000.00 in marked P20 bills, and for which he was criminally charged in court. The evidence against him was overwhelming. Such fact, by itself, sufficiently warranted his summary dismissal from the service under the above-mentioned decree. The seriousness of the offense charged, the circumstances surrounding its commission and the evidence of guilt, being overwhelming and indubitably strong, the interest of the public service demanded the drastic remedy of summary dismissal, which respondent Chairman of the Commission on Audit judiciously took against petitioner.

APPEARANCES OF COUNSEL

Florencio M. Castillo for petitioner.

Assistant Solicitor General Vicente V. Mendoza, Assistant Solicitor General N. P. de Pano, Jr. and Solicitor Jesus P. Mapunao for respondents.

Supreme Court E-Library

DECISION

SANTOS, *J.*:

In this petition for *certiorari*, *mandamus* with prayer for preliminary injunction, filed October 27, 1977, petitioner seeks — (1) the review and reversal of the order of May 27, 1977 of the Acting Chairman, Commission on Audit, (Hon. Francisco S. Tantuico Jr.) summarily dismissing him from the service, on the grounds that respondent acted without or in excess of his jurisdiction and with grave abuse of discretion and the said order is violative of his constitutional rights; and (2) his reinstatement to his former position. (*Roll*, pp. 2-7).

On November 4, 1977, We resolved, without giving due course to the petition, to require respondents to file their comment, and to issue a temporary restraining order effective as of said date and continuing until otherwise ordered by the Court. (*Roll*, p. 44).

On March 18, 1978, the Solicitor General for and in behalf of respondent, Hon. Francisco S. Tantuico, Chairman of the Commission on Audit, filed the required comment and prayed that the petition be dismissed for lack of merit. (*Roll*, pp. 66-71). Petitioner filed his rejoinder (should be reply) to the said comment on April 20, 1978. (*Roll*, pp. 94-95).

The facts of record disclose that petitioner Arturo A. Acolola was assigned as Provincial Auditor of Capiz on April 16, 1972. Sometime before December 12, 1972, an administrative complaint was filed against him charging him with various irregularities in connection with the discharge of his duties. The complaint was subsequently dismissed per letter dated December 12, 1972 of the then General Auditing Officer, per Ismael Mathay, the Auditor General. (*Roll*, Annex "A" to the Petition, p. 9).

On December 27, 1974 he was again administratively charged with offenses ranging from "misconduct, neglect of duty to incompetence in the performance of official duties," which charges were likewise dismissed per letter dated December

Supreme Court E-Library

17, 1975 per Acting Chairman, Francisco S. Tantuico Jr. (Roll, Annexes "B" and "B-1" to the Petition, p. 11).

On December 3, 1976, while petitioner was assigned as Acting Highway Engineering District Auditor of Romblon, (*Roll*, Annex "C" to the Petition, p. 12), private respondent Horacio A. Martinez, a contractor of Public Works Project in the province of Romblon, filed another complaint against petitioner charging him, this time, with —

(1) Delaying action on payment of vouchers;

(2) Delaying action on request for inspection of accomplished work;

(3) Refusal to assign an auditor's representative to check deliveries of materials at job sites at the tone of deliveries;

(4) Piece meal suspension of vouchers:

(5) Demanding free transportation and meals when on inspection of materials delivered or work accomplished; and

(6) Demanding ₱24,000 cost of plane fare for his twin daughter's trip to the United States. (*Roll* Annex G-1, pp. 21-22).

Upon the recommendation of the Civil Security Office of the Commission on Audit, an entrapment scheme was devised and executed on December 15, 1976. The same was successful. Petitioner was apprehended by the PC Provincial Command in the act of receiving from complainant Horacio A. Martinez, the amount of ₱2,000.00 in marked ₱20 bills as bribe money, while he was about to enter his room at the Seaside Hotel. (*Roll*, Comment, p. 67; Annexes "2" and "3", pp. 74-74-a).

On January 12, 1977, a formal administrative charge was preferred against him. At the same time the preventive suspension of petitioner was ordered by the respondent pursuant to Section 41, Presidential Decree No. 807. (*Roll*, Annex "F" to Petition, p. 18). Respondent, now petitioner, answered the charge. (*Roll*, Annex "H" to Petition, p. 25).

On May 12, 1977, petitioner was summarily dismissed from the service, pursuant to Presidential Decree No. 807, dated

Supreme Court E-Library

October 6, 1975 (See "Order of Summary Dismissal," Annex "I", Petition, *Roll*, p. 30). Petitioner's motion for reconsideration praying for a formal investigation having been denied, he now appeals to this Court thru this petition for *certiorari*, *mandamus* with prayer to preliminary injunction.

The issue now before Us is, whether the respondent Chairman of the Commission on Audit, could, under the foregoing circumstances, summarily dismiss petitioner pursuant to Presidential Decree No. 807.

Section 40 of Presidential Decree No. 807 specifically provides:

"SEC. 40. *Summary Proceedings.* — No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

(a) When the charge is serious and the evidence of guilt is strong.

(b) When the respondent is a recidivist or has been repeatedly charged and there is reasonable ground to believe that he is guilty of the present charge.

(c) When the respondent is notoriously undesirable.

Resort to summary proceedings by disciplining authority shall be done with utmost objectivity and impartiality to the end that no injustice is committed: *Provided*, That removal or dismissal except those by the President, himself, or upon his order, may be appealed to the Commission."

In the light of the foregoing, We agree with the Solicitor General, that the issue should be answered in the affirmative.

As the Solicitor General forcefully argued —

"It is indisputable that the summary dismissal of petitioner by respondent Chairman of the Commission on Audit, pursuant to the aforequoted provision of Presidential Decree No. 807 was premised, on the fact that petitioner was caught red-handed by agents of the Philippine Constabulary in the act of receiving and having in his possession ₱2,000.00 in marked ₱20 bills, and for which he was criminally charged in court. The evidence against him was

Supreme Court E-Library

overwhelming. Such fact, by itself, sufficiently warranted his summary dismissal from the service under the above-mentioned decree. The seriousness of the offense charged, the circumstances surrounding its commission and the evidence of guilt, being overwhelming and indubitably strong, the interest of the public service demanded the drastic remedy of summary dismissal, which respondent Chairman of the Commission on Audit judiciously took against petitioner. Respondent Chairman was indeed left with no option. With the evidence at hand, respondent Chairman could not have done otherwise.

Of course, the charges filed earlier against petitioner could not just be allowed to pass unnoticed."

IN VIEW OF THE FOREGOING, the Court resolved to dismiss, as it hereby DISMISSES, this petition for lack of merit. The temporary restraining order dated November 4, 1977 is hereby LIFTED and SET ASIDE.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio and *Aquino, JJ.*, concur.

Concepcion Jr., J., is on leave.

SECOND DIVISION

[A.M. No. P-1399. June 29, 1978]

VISITACION EGOS, *complainant, vs.* **HERMINIA G. GALLARDO,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; GUILTY OF LACK OF DILIGENCE AND