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[G.R. No. 60074. July 7, 1986]

TEOFILO I. MARCELO, *petitioner, vs.* **FRANCISCO S. TANTUICO, JR., Acting Chairman, Commission on Audit, Board of Directors, Philippine Coconut Authority and JOAQUIN T. VENUS, JR., Deputy Presidential Executive Assistant,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; CIVIL SERVICE; SUMMARY DISMISSAL; WHEN VALID AND JUSTIFIED.—** Petitioner's summary dismissal was valid and justified under section 3 (a) of P.D. No. 6, which provides – "SEC. 3. *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." It is clear from the foregoing provision of P.D. No. 6, which has now been engrafted in Sec. 40 of P.D. 807, otherwise known as the Civil Service Decree of the Philippines that "when the charge is serious and the evidence of guilt is strong," one may be dismissed summarily without the necessity of a formal investigation. (*Alcolala vs. Tantuico, Jr.*, 83 SCRA 789).

2. **ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR.—** In the case at bar, when petitioner was dismissed, there was a pending criminal case for malversation thru falsification of public and commercial documents and violation of the Anti-Graft and Corrupt Practices Act filed against him and several others for having conspired in the issuance of authorizations or allocations for the sale of subsidized coconut edible oil in the amount of P349,608.98 to dealers who were non-existent and fictitious and for forgery of the signatures of some officials of the Philippine Coconut Authority. Considering, therefore, the nature of the crimes, the amount involved and the manner in which

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the said crimes were committed, there is no doubt that the charge against petitioner is serious. That the evidence of guilt is strong, is borne out by the various affidavits and/or sworn statements of no less than twelve (12) witnesses, all showing the participation of petitioner and his co-respondents in the commission of the crimes charged. If the cases against petitioner were later dismissed by the Tanodbayan, it was because some of the witnesses retracted. Such retraction or desistance, however, does not carry with it an imprimatur of innocence. (*De la Cruz vs. Mudlong*, 84 Phil. 28) What is material is that at the time of his dismissal, the evidence against him was so strong as to bring it within the ambit of PD No. 6.

3. **ID.; ID.; ID.; ID.; WHEN A DISMISSED EMPLOYEE BE REINSTATED AFTER SUBSEQUENT EXONERATION.**— Will his subsequent exoneration entitle him, as a matter of right, to his reinstatement? Letter of Instruction No. 647 supplies the answer. It provides — "All officials and employees who were not recommended for reinstatement by the Appeals Committee but are qualified to reenter the government service are hereby granted executive clemency for purposes of reemployment subject to Civil Service Law and rules if *recommended by their respective heads*." Under the said Letter of Instruction No. 647, before a dismissed employee could be reinstated he had to be so recommended by his department head. In the case of petitioner, his request for reinstatement was denied by the Acting Chairman of the Commission on Audit because all old positions had been abolished under the reorganization of the Commission on Audit pursuant to PD 898. It has been consistently held that when an office is validly abolished the incumbent cannot be placed by the court to sit in the new office created. This is a matter which should be addressed to the appointing power in the exercise of its sound judgment and discretion. (*Manalang vs. Quitoriano*, 94 Phil. 911).

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS;* WHEN MAY BE GRANTED.**— *Mandamus* will not lie to compel the respondents to reinstate the petitioner. For mandamus is available only to compel the performance of a ministerial duty. (*PAL Employees' Association vs. Philippine Air Lines*, 111 SCRA 215) Not in the case at bar, where petitioner's reinstatement rests upon the sound discretion of respondent public officials. *Mandamus* requires a showing of a clear and certain right, it

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never issues in doubtful cases. (*Taboy vs. Court of Appeals*, 105 SCRA 758). Absent any showing of a clear right on the part of herein petitioner to demand his reinstatement and a corresponding duty imposed by law on the respondents to reinstate him, the instant petition must be dismissed.

DECISION

PARAS, *J.*:

This petition for *Mandamus* with Mandatory Injunction seeks to compel respondents to reinstate petitioner Teofilo I. Marcelo to the position of Corporate Auditor of the Philippine Coconut Authority and to pay him his unpaid salaries, allowances, emoluments and other benefits from the date he was dismissed from service up to his reinstatement.

The following basic pertinent facts are not disputed:

Petitioner entered the government service on May 3, 1949, starting as checker in the office of the Auditor of the defunct NARIC. After going thru the ladder of promotions, he was promoted on January 1, 1974 to the position of Corporate Auditor of the Philippine Coconut Authority until he was arrested by military authorities on March 10, 1974 for "Malversation thru Falsification of Public Documents" and "Violation of the Anti-Graft & Corrupt Practices Act" for which he was formally charged and indicted before the Military Tribunal.

Meanwhile and in view of these criminal charges filed against petitioner, his name was included in the list of persons purged/separated/ousted from the government service on September 21, 1975 as published in the Metropolitan newspapers.

Contesting his dismissal, petitioner filed a letter-appeal to the Committee on Appeals, Office of the President, dated November 24, 1975, but he was advised by the committee to wait for the termination of the case filed against him before the Military Tribunal.

Sometime in 1977 however, the cases against petitioner were transferred from the Military Tribunal to the Office of the City

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Fiscal of Quezon City and subsequently from the latter to the Tanodbayan, which dismissed on April 22, 1980, the charges for insufficiency of evidence in view of the retractions of the principal witnesses for the prosecution. But, the Tanodbayan recommended the filing of perjury cases against the said retracting witnesses.

On August 31, 1981, petitioner wrote a letter to the President of the Philippines requesting reinstatement to his former position as Corporate Auditor, Philippine Coconut Authority and payment of his unpaid salaries, allowances, emoluments and other benefits from March 16, 1975 up to his reinstatement.

On January 27, 1982, the Office of the President sent a letter-reply to the petitioner which reads:

"Sir:

This has reference to your request for reinstatement contained in a letter dated August 31, 1981.

In a self-explanatory 2nd Indorsement dated October 1, 1981, copy enclosed, the Acting Chairman of the Commission on Audit is not inclined to consider your petition favorably due to the reasons stated herein.

In view thereof, this Office much to its regret, is constrained to deny your petition.

Very truly yours,

(Sgd.) JOAQUIN T. VENUS, JR.
Deputy Presidential Executive Assistant"
(p. 126, *Rollo)*

The aforesaid Second Indorsement dated October 1, 1981 reads–

Respectfully returned to the Officer-in-Charge, Legal Office, Office of the President, Malacañang, Manila.

As a matter of policy, reinstatement of COA personnel whose services were terminated in the September 21, 1975 'purge' is not favorably considered by this Commission.

Furthermore, all old positions have been abolished under the reorganization of the Commission on Audit pursuant to Presidential Decree No. 898. This stand of the Commission is further strengthened

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by the recent proposal of the Philippine Coconut Authority for a cutback of COA personnel due to budgetary deficiency brought about by reduced financial support.

(Original Signed)
FRANCISCO S. TANTUICO, JR.
Acting Chairman"

In the meantime, petitioner had already secured his COA and PCA clearances for purposes of retirement effective September 21, 1975.

On April 2, 1982, petitioner filed the instant petition with the prayers as herein earlier stated, raising the following issues, to wit:

a) whether or not petitioner's summary removal from office as Corporate Auditor of the Philippine Coconut Authority was legal; and

b) whether or not respondents can be compelled by *Mandamus* to reinstate petitioner and to pay him his salaries, allowances, and other emoluments and benefits from the date he was dismissed from the service.

We find the instant petition devoid of merit. Consequently, the same must be dismissed.

Petitioner's summary dismissal was valid and justified under section 3 (a) of P.D. No. 6, which provides –

"SEC. 3. *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." (Italics supplied)

It is clear from the foregoing provision of P.D. No. 6, which has now been engrafted in Sec. 40 of P.D. 807, otherwise known

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as the Civil Service Decree of the Philippines that "when the charge is serious and the evidence of guilt is strong," one may be dismissed summarily without the necessity of a formal investigation. (*Alcolala vs. Tantuico, Jr.*, 83 SCRA 789).

In the case at bar, when petitioner was dismissed, there was a pending criminal case for malversation thru falsification of public and commercial documents and violation of the Anti-Graft and Corrupt Practices Act filed against him and several others for having conspired in the issuance of authorizations or allocations for the sale of subsidized coconut edible oil in the amount of P349,608.98 to dealers who were non-existent and fictitious and for forgery of the signatures of some officials of the Philippine Coconut Authority.

Considering, therefore, the nature of the crimes, the amount involved and the manner in which the said crimes were committed, there is no doubt that the charge against petitioner is serious. That the evidence of guilt is strong, is borne out by the various affidavits and/or sworn statements of no less than twelve (12) witnesses, all showing the participation of petitioner and his co-respondents in the commission of the crimes charged. If the cases against petitioner were later dismissed by the Tanodbayan, it was because some of the witnesses retracted. Such retraction or desistance, however, does not carry with it an imprimatur of innocence. (*De la Cruz vs. Mudlong*, 84 Phil. 28) What is material is that at the time of his dismissal, the evidence against him was so strong as to bring it within the ambit of PD No. 6.

Now then, will his subsequent exoneration entitle him, as a matter of right, to his reinstatement? Letter of Instruction No. 647 supplies the answer. It provides —

"All officials and employees who were not recommended for reinstatement by the Appeals Committee but are qualified to reenter the government service are hereby granted executive clemency for purposes of reemployment subject to Civil Service Law and rules if *recommended by their respective heads*." (Italics supplied)

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Under the said Letter of Instruction No. 647, before a dismissed employee could be reinstated he had to be so recommended by his department head. In the case of petitioner, his request for reinstatement was denied by the Acting Chairman of the Commission on Audit because all old positions had been abolished under the reorganization of the Commission on Audit pursuant to PD 898. It has been consistently held that when an office is validly abolished the incumbent cannot be placed by the court to sit in the new office created. This is a matter which should be addressed to the appointing power in the exercise of its sound judgment and discretion. (*Manalang vs. Quitoriano*, 94 Phil. 911).

Consequently, *mandamus* will not lie to compel the respondents to reinstate the petitioner. For mandamus is available only to compel the performance of a ministerial duty. (*PAL Employees' Association vs. Philippine Air Lines*, 111 SCRA 215) Not in the case at bar, where petitioner's reinstatement rests upon the sound discretion of respondent public officials.

Mandamus requires a showing of a clear and certain right, it never issues in doubtful cases. (*Taboy vs. Court of Appeals*, 105 SCRA 758). Absent any showing of a clear right on the part of herein petitioner to demand his reinstatement and a corresponding duty imposed by law on the respondents to reinstate him, the instant petition must be dismissed.

IN VIEW OF THE FOREGOING, the Court resolved to dismiss, as it hereby DISMISSES, this petition for lack of merit. Costs against petitioner.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and *Cruz, JJ.*, concur.