

LOYOLA, Lourdes R.

Re: Appeal; Oppression, Misconduct,
Inefficiency and Incompetence in
the Performance of Official Duties

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RESOLUTION NO. 01-0922

Francisca S. Baluyot, Chapter Administrator of the Philippine National Red Cross (PNRC), Bohol Chapter, filed a complaint against Lourdes R. Loyola, Secretary General of the PNRC for Oppression, Misconduct and Inefficiency and Incompetence in the Performance of Official Duties before the Civil Service Commission Regional Office (CSCRO) No. VII of Cebu City. However, a careful perusal of the complaint would show that the same partakes of the nature of an appeal from a decision of the PNRC Secretary General in a disciplinary case, hence, falling within the jurisdiction of the Commission Proper pursuant to Section 5 of the Uniform Rules on Administrative Cases in the Civil Service.

The pertinent portions of the decision dated April 10, 2000 of Lourdes R. Loyola, Secretary General of the PNRC stated as follows:

“On 28 March 2000, a formal charge was lodged against you for the following offense (sic):

*‘a) Violation of the Chapter By Laws on the Handling and Disposition of Funds
(Art. 6, Par. 2nd, Article II and Article XII);*

'b) Non-disclosure of the Official Depository Bank Account of Bohol; Red Cross Chapter with the Board of Directors and with PNRC Auditors;

“You were likewise charged with Dishonesty based on the Resolution of the Office of the Ombudsman (Visayas)

“In your reply dated 3 April 2000, you failed to explain satisfactorily the above-cited infractions;

“In view of the foregoing you are hereby advised of your dismissal from the service for dishonesty and malversation of funds effective 15 April 2000 with forfeiture of all benefits and suffer perpetual disqualification from the service either as volunteer or staff and without prejudice to the filing of criminal charges by the PNRC. “

In her complaint, which this Office considers as an appeal, Baluyot avers as follows:

“2. That on March 28, 2000, I received from LOURDES R. LOYOLA, Secretary-General of the Philippine National Red Cross, a Formal Charge alleging certain violations and giving me forty-eight (48) hours to explain the same xxx;

“3. On March 30, 2000 I filed my answer to the formal charge expecting that I be given a formal hearing therewith considering the complexity and gravity of the accusations as provided for by the Revised Uniform Rules on Administrative Cases in the Civil Service and that I be exonerated of the same inasmuch as these were grounded on flimsy and wild accusations;

“4. To my utter shock and surprise, I received a letter dated 10 April 2000 from the said Lourdes R. Loyola ordering my dismissal from the service effective 15 April 2000 or five

days therefrom, imposing additional severe penalties of forfeiture of all benefits and perpetual disqualification from the service to my grave prejudice, xxx;

“5. The dismissal order was issued without the normal formal hearing, carried out with undue haste in just a span of thirteen (13) days from the date of the formal charge and was without the approval of the PNRC Board of Governors. Also, the effectivity dated of the dismissal was a mere five days from the date of notice of dismissal;

“6. My appointment as Chapter Administrator was made on December 6, 1974 as evidenced by the attached photocopy of Letter of Appointment signed by (Mrs.) Loreto Paras Sulit, then Secretary-General of the Philippine National Red Cross, and marked as Annex ‘C’. It must be emphasized here that said appointment was duly confirmed by the PNRC Board of Governors as noted in the Letter of Appointment;

“7. During my appointment as Chapter Administrator, the existing By-Laws then of the PNRC provides, among others, that: ‘He (Secretary General) shall cause the investigation of any employee accused of misconduct, malfeasance or immorality, before disciplinary action is imposed and depending on the gravity of the crime, order the employees dismissal from the service subject to the approval. Of the Board’ (Section 1.g, Article IX, By-Laws of the Philippine National Red Cross);

“8. In a letter dated 5 May 2000 (attached hereto as Annex ‘D’), Mrs. Loyola offered the lame explanation that she invoked and used the amended By-Laws of the PNRC dated 25 September 1997 which provides:

‘He (Secretary-General) shall cause the investigation of any employee accused of

misconduct, malfeasance or immorality, before disciplinary action is imposed and depending on the gravity of the crime, order the employees dismissal from the service except that for employees appointed with the occurrence of the Board, the dismissal shall be subject to the approval of the Board.’ This is in conjunction with another amended provision of the same By-Laws, which states that ‘Chapter Administrators shall be appointed by the Secretary-General in consultation with the Chairman from the list of ready now candidates from the Management Development Program.’

“9. The application by Mrs. Loyola on my case of the amended provisions cited in paragraph 8 is patently wrong and highly irregular because when I obtained my appointment, the then prevailing PNRC By-Laws clearly provided that I can only be removed from the service for cause with the approval of the PNRC Board of Governors;

“10. I have the right to expect to continue benefiting from employment benefits and guarantees I have long enjoyed as a permanent employee since it is a respected legal principal (sic) that if an employment benefit has been established as a policy, it is in effect a part of the employment contract, written or unwritten; such that the law forbids the employer from diminishing or eliminating it unilaterally. Among these benefits is the removal from service for cause only with the approval by the PNRC Board.

“11. The said amended provisions in the PNRC By-Laws made on September 25, 1997 should only be applied to applicable employees who were appointed during the effectivity of the provision but definitely not in my case as this would be violative of my ‘security of tenure’;

“12. The PNRC, as a government-owned and controlled corporation with original charter under R.A. 95, is under the control of the Department of Social Welfare and Development per Executive Order No. 708 dated July 27, 1981;

“13. Section 7. A. 2, Rule I of the Revised Uniform Rules on Administrative Cases in the Civil Service states that: ‘Decisions of Heads of Agencies imposing a penalty of removal shall be executory only after confirmation by the Department Secretary concerned.’ Thus, in the case of PNRC it shall be the secretary of the Department of Social Welfare and Development.

“14. The dismissal order issued by Mrs. Loyola does not contain the required approval by the PNRC Board of Governors nor had it been confirmed by the Secretary of the Department of Social Welfare and Development; thus, violating not only the very By-Laws of the PNRC but also the procedural rules of the Civil Service.

“15. The dismissal order suffered from many other fatal lapses from the point of view of the Revised Uniform Rules on Administrative Cases in the Civil Service, among them: a) giving me only forty eight (48) hours to answer the formal charge instead of the normal seventy two (72) hours; b) the formal charge was not accompanied with certified true copies of the documentary evidences; c) there was no formal hearing of the charge wherein I can confront the witnesses and refute the testimonies leveled against me; and d) there was no formal investigation report containing a narration of the material facts established and detailing the findings and the evidences supporting said findings as well as the recommendation of the disciplining authority;

“16. Mrs. Loyola likewise violated the Constitutional provision which states that: ‘No officer or employee of the Civil Service shall be removed or suspended except for cause provided by law.’ (Section 2(3), Article IX of the Philippine Constitution)

“17. I am executing this affidavit and filing this complaint with the Civil Service Commission with the end view that the corresponding penalties and/or sanctions be imposed against the said Mrs. Lourdes R. Loyola.”

In her comment, Lourdes Loyola, stated as follows:

“It is a matter of record that in a memorandum dated 10 April 2000, complainant-appellant, Mrs. Francisca S. Baluyot, was terminated from her position as Chapter Administrator of the PHILIPPINE NATIONAL RED CROSS – Bohol Chapter effective 15 April 2000. On even date, the complainant-appellant received a copy of the said order. As such, the defendant-appellant had fifteen (15) days until 25 April 2000 within which to appeal the said order of termination to this Honorable Commission pursuant to Memorandum Circular No. 19, Series 1999, otherwise known as Uniform Rules on Administrative Cases in the Civil Service xxx;

“Here the instant appeal was filed sometime June 2000 at the Civil Service Commission Regional Office (CSCRO) No. VII which is obviously way beyond the reglementary period of fifteen (15) days. Hence, for failure of the complainant-appellant to file the instant appeal within or before 25 April 2000, then the dismissal of the instant appeal is more warranted xxx”

“WHEREFORE, it is respectfully prayed that this Honorable Commission order the dismissal of the instant appeal for having been filed beyond the reglementary period.”

In her Comment/Manifestation, Baluyot avers as follows:

“1. The complaint filed before this Honorable Commission against respondent Lourdes R. Loyola was an original complaint for Oppression, Misconduct, and In efficiency and incompetence in the Performance of Official Duties and NOT an appeal on the dismissal order issued by the latter to the former on April 10, 2000 and to take effect five days later or on April 15, 2000;

“Complainant has filed a civil case for Injunction with Prayer Preliminary Injunction and/or Temporary Restraining Order and Damages against Mrs. Loyola on April 14, 2000 or a day before the said dismissal order was to take effect. This case is now pending at Branch 49, Regional Trial Court, 7th Judicial Region with seat at Tagbilaran City as Civil Case no. 6486;

“3. The complainant was formed to seek for the immediate succour (sic) of the courts and not to the Honorable Commission by way of appeal because of the urgency of the matter and issue of constitutionality of the dismissal order.

“4. The complainant has also informed the Honorable Court handling the said civil case of this administrative complaint xxx;

“5. The complaint before this Honorable Commission should therefore be treated as an original administrative case against respondent and not as an appeal of the questioned dismissal order on account of the above-stated reasons;

“6. Should the Honorable Commission consider the administrative complaint as an appeal we manifest that the same be shelved or archived until the resolution of the pending civil case.

“WHEREFORE, premises considered, it is respectfully prayed of this Honorable Commission to consider the administrative complaint as an original case or if it does consider it as truly an appeal then we pray that it be shelved or archived until the resolution of the pending civil case.

In her Counter-Manifestation, Loyola stated as follows:

“Contrary to the complainant’s submission, the instant case should not be shelved or archived premised on the pendency of the Civil Case No. 6486 entitled ‘Francisca S. Baluyot v. Lourdes R. Loyola, as Secretary General of Philippine National Red Cross;

“Appellant Mrs. Francisca S. Baluyot was terminated from her position as Chapter Administrator of the Philippine National Red Cross-Bohol Chapter on 15 April 2000. Being so, her recourse should have been an appeal to this Honorable Commission pursuant to Action 43 of Memorandum Circular No. 19m, series 1999;

“However, instead of filing one, appellant opted first to file a petition for injunction with the regular court at Bohol questioning the validity of her dismissal which herein respondent-appellee sought to dismiss for failure to exhaust remedies before this Honorable Commission, among others. A few months later, herein complainant filed the instant appeal, a clear case of forum shopping xxx;

“In other words, realizing the futility of her resort with the Regional Trial Court of Bohol, appellant would now, by way of the instant appeal, seek succor from this Honorable Commission to (sic) acts of respondent-appellee xxx

“More importantly, with the filing of the instant case, this Honorable Commission has acquired jurisdiction of (sic) the same. As such, contrary to the manifestation of herein complainant, the instant case should not be suspended or archived xxx

”Stated differently, the competence of this Honorable Commission to resolve the issue on hand should prevail over the exercise of jurisdiction by any other tribunal consistent with the exercise of primary jurisdiction over the instant case xxx

Records show that Francisca Baluyot was dismissed from the service by Lourdes R. Loyola, Secretary

General of the PNRC in her decision dated April 10, 2000. A Petition for injunction was filed with the regular court at Bohol questioning the validity of her dismissal. In June, 2000, Baluyot filed a complaint with the Civil Service Commission Regional Office (CSCRO) No. VIII against Loyola. However, the same was forwarded to the Commission on the belief that said complaint should be properly treated as an appeal on Baluyot's dismissal from the service.

Hence, this Appeal.

The issues in this case are as follows:

1. Whether or not the Commission can take cognizance of the instant appeal.
2. Whether the dismissal of Francisca S. Baluyot is in order.

Anent the first issue the Commission rules in the affirmative.

Relevant to this is the ruling of the High Court in the case of ***Camporedondo vs. National Labor Relations Commission, 312 SCRA 47***, which states that:

“xxx the Philippine National Red Cross (PNRC) is a government owned and controlled corporation, with an original charter under Republic Act No. 95, as amended. The test to determine whether a corporation is government owned and controlled, or private in nature is simple. Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission, and are compulsory members of the Government Service Insurance System.”

Hence, since the Philippine National Red Cross is a government owned and controlled corporation with original charter, the Civil Service Commission (CSC) has jurisdiction over its employees. As such, disciplinary jurisdiction attaches over them in the same manner that all appointments thereat should pass through the Commission.

Anent the second issue, the Commission rules in the negative.

Records show that Francisca S. Baluyot, after the issuance of the formal charge against her, filed an answer signifying her intention to have a formal investigation. However, the disciplining authority, not being satisfied with her explanation immediately issued an order dismissing her from the service. **Section 22, Rule II of the Uniform Rules on Administrative Cases in the Civil Service** provides that *“although the respondent does not request a formal investigation, one shall nevertheless be conducted by the disciplining authority where from the allegations of the complaint and the answer of the respondent, including the supporting documents of both parties, the merits of the case cannot be decided judiciously without conducting such investigation.”*

While it is true that a formal trial-type is not essential to due process, it is necessary that *“the parties are given a fair and reasonable opportunity to explain their sides of the controversy and to present supporting evidence on which a fair decision can be based.”* (**Autobus Workers Union [AWU] vs. National Labor Relations Commission, 291 SCRA 219**) Also, before an employer may dismiss an employee, the latter must be afforded due process which means, among others, the opportunity to confront the witnesses against him and to adduce evidence in his defense. (**Biantan vs. NLRC, 287 SCRA 645**)

It should be noted that even under the amended By-Laws of the PNRRC, one of the functions of Lourdes R. Loyola, as disciplining authority, is to cause the investigation of an employee accused of misconduct, malfeasance or immorality and considering the gravity of the charges against Baluyot, which are dishonesty and malversation, both being grave offenses, which if proven by substantial evidence will cause

her dismissal from the service, Loyola should have ordered the conduct of a formal investigation.

Moreover, the amended By-Laws provides that the Secretary General can order the employees dismissal from the service except that for employees who are appointed with the concurrence of the Board. Since the appointment of Baluyot was confirmed by the PNRC Board of Governors, her dismissal should also have been approved with the concurrence of the Board. Settled is the rule that *the power to appoint carries with it the power to dismiss*. Since the law prevailing at the time of Baluyot's appointment states that his dismissal should also be confirmed by the Board, the said law shall govern. The amended by laws cannot be given retroactive effect considering that it will be detrimental to employees who were previously appointed by the Secretary General with the confirmation by the Board. Thus, it is violative of Baluyot's right to due process such that *"No officer or employee in the Civil Service shall be removed or suspended for a cause as provided by law and after due process."*

In point thus is **Section 48 of the Uniform Rules on Administrative Cases in the Civil Service** which provides:

Section 48. When Case is Remanded for Violation of Respondent's Right to Due Process. – If the case on appeal with the Commission Proper is remanded to the proper disciplining authority for further investigation, the said disciplining authority shall finish the investigation within three (3) calendar months from the date of receipt of the records from the Commission, unless the investigation is delayed due to the fault, negligence or petition of the respondent, or an extension is granted by the Commission Proper in meritorious cases. The period of delay shall not be included in the computation of the prescribed period.

“Within fifteen (15) days from the termination of the investigation, the disciplining authority shall render its decision. If at the end of said period, the disciplining authority fails to decide the case, the Commission Proper shall vacate and set aside the appealed decision and declare respondent exonerate of the charge. If the respondent is under preventive suspension,

he shall be immediately reinstated and shall be entitled to back salaries and other benefits.

“The Civil Service Regional Office and the Office for Legal Affairs of the Commission Proper shall evaluate requests for the extension of formal investigations and grant the same on meritorious grounds. In disposing the requests, these offices shall be guided by the principles of justice and fair play, provided, that the extension shall not be for more than twenty (20) days.

“For this purpose, the Director shall monitor the implementation of the CSC Resolution remanding the case to the proper disciplining authority for further investigation and to submit a report to the Commission Proper.

On the contention of Loyola that this appeal should be dismissed because it was filed beyond the prescriptive period, it was held in the case of *Mendoza vs. CSC, G.R. No. 105685, July 5, 1994, 233 SCRA 657* that “xxx even if the his appeal was filed beyond the prescriptive period, his case still falls within the ambit of our ruling in *Mangubat vs. De Castro, 163 SCRA 608*). In that case we held that administrative rules of procedure shall be construed liberally in order to promote their object and assist the parties in claiming just, speedy and inexpensive determination of their respective claims and defenses. xxx” What is important is that appellant should be afforded her right to due process.

WHEREFORE, the appeal of Francisca S. Baluyot is **GRANTED**. Accordingly, she is reinstated to her position with payment of backwages without prejudice to the conduct of further proceedings in compliance with the due process requirements of the law as provided in Section 48, Rule III of the Uniform Rules on Administrative Cases in the Civil Service.

Quezon City, **May 11, 2001**

(SIGNED)

JOSE F. ERESTAIN, JR.

Commissioner

(SIGNED)

KARINA CONSTANTINO-DAVID

Chairman

(SIGNED)

J. WALDEMAR V. VALMORES

Commissioner

Attested by:

(SIGNED)

ARIEL G. RONQUILLO

Director III

CPS/AGR/pvp/cm 11-2001

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