

ADMINISTRATIVE ORDER NO. 238

ADMONISHING MACARIO A. ASISTIO, JR., KALOOKAN CITY MAYOR, WITH A STERN WARNING THAT FUTURE MISCONDUCT IN OFFICE WILL BE DEALT WITH MORE SEVERELY

This refers to the "COMPLAINT" filed by Delfina A. Hernandez Santiago against Mayor Macario A. Asistio, Jr. of Kalookan City for "violation of Presidential Decree No. 807, the Civil Service Law and Rules, to wit (a) Art. IX, Sec. 36[b][1] Dishonesty; (b) Art. IX, Sec. 36[b][2] Oppression; (c) Art. IX, Sec. 36[b][5] Disgraceful and Immoral Conduct."

Antecedent facts show that Delfina A.H. Santiago, former City Personnel Officer of Kalookan City, went on a 240-day approved sick leave of absence covering the period from January 25 to December 31, 1988.

On February 5, 1988, or upon assumption of office, respondent Mayor Asistio issued a memorandum cancelling "all leaves of absences of city officials and employees x x x effective immediately." In another memorandum of even date, respondent Mayor informed complainant Santiago of her detail with the Office of the Secretary to the Mayor. In reaction, complainant Santiago wrote the respondent Mayor explaining her incapacity to report for duty.

Through a letter dated April 21, 1988, complainant Santiago was given by the Office of the City Legal Officer (CLO) another five (5) days reckoned from the receipt of the aforesaid letter to report for work, "otherwise, the undersigned may be constrained to take drastic action against you." On May 2, 1988, complainant Santiago requested for ten (10) days within which to submit her answer.

On December 19, 1988, after an ex-parte investigation, the Office of the CLO reached a resolution, pertinent portions of which are quoted hereunder, recommending the dismissal of complainant Santiago, "the instant case being the second infraction of the Civil Service Law by Atty. Santiago," for insubordination and neglect of duty:

"3. In 1983, Atty. Santiago was charged administratively for UNAUTHORIZED ABSENCES,

in violation of the Civil Service Laws. Upon recommendation of the Office of the City Legal Office, Atty. Santiago was validly and lawfully ordered to be dropped from the rolls which was subsequently approved and affirmed by the Civil Service Commission in the latter's order dated October 1983, the dispositive portion of which reads:

x x x

FINDINGS

x x x, memorandum dated February 5, 1988 issued by Hon. City Mayor, Macario A. Asistio, Jr. x x x cancelled all leave of absences x x x. x x x Atty. Santiago was duly served with the said memo as appearing on the said memo is her signature, an evidence of receipt thereof. Having received the said memo Atty. Santiago was fully aware of the cancellation of her leave of absence and therefore as a prudent employee she should have observed the memorandum of the City Mayor by way of reporting for work as called for. What happened instead was that Atty. Santiago never showed-up, thereby neglecting her duty as Asst. City Administrator and committed, in effect, insubordination.

What is nagging and aggravates the predicament of Atty. Santiago is that the instant case is already her second violation which places in the category of incorrigible employees. the first is when she was charged of UNAUTHORIZED ABSENCES, punished for said act and made to suffer the corresponding penalty thereof."

Acting on the said resolution, respondent Mayor Asistio, in a memorandum dated May 18, 1989, dismissed complainant Santiago from the service.

On June 9, 1989, complainant Santiago filed a complaint before the Department of Local Government, now the Department of Interior and Local Government (DILG), docketed thereat as Administrative Case No. C-10403-89, against Mayor Macario A. Asistio, Jr., which complaint was later amended as to the subtitles appearing on pages 1 and 6 thereof. In this complaint, complainant Santiago charges:

- "1. The resolution which is the basis of the dismissal order was without just cause nor due process and therefore, null and void; the administrative penalty was not based on any

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administrative charge/case. The dismissal order is, therefore, also null and void. The cause is dishonesty and oppressive; the effect is, therefore, also dishonest and oppressive.

2. The dismissal order is moot and academic since I had already resigned from the service effective January 1, 1989. A copy of my letter of resignation is enclosed herewith as Annex C.
3. The dismissal order would be prejudicial to my rights as a resigning employee, since it would deprive me of my benefits as such, including my rights under the GSIS Law.
4. The dismissal order is not only illegal but also immoral and derogatory of my rights and integrity as a former government official. With it, respondent mocked at the oath he took to safeguard the honor of the public office entrusted to him."

In view of the constitution of the Metro Manila Authority under Executive Order No. 392 dated January 9, 1990, and pursuant to the Memorandum of the Executive Secretary dated March 2, 1990, providing for the direct investigation of all administrative charges/complaints against elective officials of Metropolitan Manila by the Office of the President (proper), principally through the Presidential Management Staff (PMS), the case at bar was transferred to this Office for evaluation and investigation.

A memorandum of June 11, 1991 from the PMS contains the following pertinent facts and recommendation.

x x x

- "8. During the preliminary conference to this case, the parties agreed to the submission of the case for resolution on the basis of the pleadings and the evidence on record pursuant to Section 4[1], Rule 3 of A.O. 195.
9. After due evaluation of the case, we found that the respondent's act in dismissing the complainant from service was properly done in good faith and is therefore not guilty of dishonesty and oppression.
10. What is important in a case where there is an allegation of lack of due process is that the party complaining is given the opportunity to be heard. What the law prohibits is not the absence of previous notice but the absolute

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absence thereof and lack of opportunity to be heard (Tajonera v. Lamarosa, 110 SCRA 438). In the instant case, the letter of the City Legal Officer sufficiently informed the complainant of the possible 'drastic action' against her if she failed to report for work.

- 11. In view thereof, we recommended that the complaint against Mayor Macario Asistio, Jr. be dismissed."

The question of dishonesty, disgraceful and immoral conduct is hardly of relevance under the premises. This thus brings to the fore the core issue of whether or not respondent Mayor is administratively liable for oppression for his action/s against the complainant.

Respondent Mayor, through the City Legal Officer of Kalookan City, argued in his Memorandum dated January 21, 1991 that:

x x x

"The respondent referred to the City Legal Office for investigation the matter of complainant's refusal to report for work and her leave of absence for 240 days. The said referral by respondent is equivalent to an administrative complaint pursuant to law, specifically Par. [2][d], Section 171 of the Local Government Code (B.P. Blg. 337) which provides:

'[2] The City Mayor shall:

x x x

[d] See to it that executive officers and employees of the city faithfully discharge their respective duties and for the purpose, cause, if necessary, the institution and filing of appropriate criminal or administrative action;' (underlining for emphasis).

Also quoted hereunder is a pertinent provision of the Civil Service Law on the matter:

'P.D. 807 - Civil Service Law

x x x

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Sec. 37. x x x

[b] The heads of departments, agencies, and instrumentalities, provinces, cities x x x shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.' x x x.

Under the aforequoted laws, the referral of the disciplining authority (Respondent Mayor) to the City Legal Officer for investigation has to be given due course. In this case, it was in fact treated as an administrative complaint so that it can not be argued that there was no administrative case filed against the complainant in this case.

x x x

After the City Legal Office conducted an investigation of the administrative case against the complainant wherein the latter failed and refused to participate, the former decided the case on the basis of records and evidence available. x x x.

This Office is not impressed with the respondent Mayor's posture in defense. Contrary to what he alleged, the referral to the City Legal Officer of the matter of complainant's refusal to report for work is not equivalent to an administrative complaint against complainant Santiago. The rule is elementary that, whether in criminal or administrative proceedings, one is entitled to be informed of the nature and cause of the charges against him or her. To properly initiate an administrative proceedings, the complaint shall be in writing, in clear, simple and concise language and in a systematic manner as to apprise the respondent of the nature of the charges against him/her, to enable him/her to prepare a defense (Section 4, Rule III, Civil Service Rules on Administrative Disciplinary Cases; underscoring supplied).

Section 38 of Presidential Decree (P.D.) No. 807, otherwise known as the "Civil Service Decree of the Philippines," provides that if a prima facie case exists, the disciplining authority "shall notify the respondent in writing of the charges against the latter, x x x, and the respondent shall be allowed not less than seventy-two (72) hours after receipt of the complaint to answer the charges in writing under oath, x x x, in which he shall indicate whether or not he elects a formal investigation if his answer is not considered satisfactory."

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Records disclose that complainant Santiago was merely sent a letter on April 29, 1988 by the City Legal Officer informing her that "we are giving you another five (5) days from receipt hereof to report for work, otherwise, the undersigned may be constrained to take drastic action against against you." From said letter, the City Legal Officer proceeded with an ex-parte investigation and then arrived at a resolution recommending complainant Santiago's dismissal from the government service. Whereupon, respondent Mayor adopted said resolution and summarily dismissed complainant Santiago.

The respondent Mayor cannot, on the basis of the aforesaid resolution, summarily dismiss complainant Santiago without violating Section 36[a] of P.D. No. 87, as amended, which pertinently provides:

"Section 36. Discipline. General Provisions - [a] No officer or employee of the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process. (emphasis supplied).

The letter dated April 21, 1988 can hardly be considered an administrative complaint as it merely warned complainant Santiago that "drastic action" will be taken on her continuous failure to report for duty. This warning does not amount, or as respondent put it, "equal" to an administrative complaint. Solely on the basis of that letter, one cannot legally commence administrative proceedings against complainant Santiago, much more summarily imposed upon her the penalty of dismissal from office, without violating the due process clause of the Constitution. Basically, due process, as it relates to personnel disciplinary action, would require that suspension or dismissal be for cause and comes only after notice and hearing (Bernas, The Constitution of the Republic of the Philippines, Vol. II, 1988 ed., p. 334). "While the law recognizes the right of the employer to dismiss employees in warranted cases, the law frowns upon arbitrary and whimsical exercise when employees are not accorded due process" (Tan, Jr. v. NLRC, 183 SCRA 651). This Office believes that respondent Mayor should have given complainant Santiago the opportunity to explain her side of the controversy.

It may be mentioned that the records failed to show that complainant Santiago was duly notified of the "ex-parte investigation" conducted by the City Legal Officer. Thus, complainant Santiago averred: "(N)ot one among the abovementioned documents was a letter, a summons, a subpoena, a memo, or any sort of notice informing her that (1) an administrative case was filed against her or that (2) she was being summoned to an administrative investigation of any sort of case against her" (Complainant Santiago's Memorandum, January 21, 1991, at p. 5). The letter of April 21, 1988 of the City Legal Officer is not an adequate notice contemplated by law.

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The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to a man's innate sense of justice.

Verily, it appears in the light of the above factual observations that complainant Santiago had been terminated without proper observance of due process of law. Resultantly, respondent acted in the excessive use of authority amounting to "Oppression" (Philippine Law Dictionary, 1982 ed., at p. 430) in dismissing complainant Santiago without affording her due process.

WHEREFORE, Mayor Macario A. Asistio, Jr. of Kalookan City is hereby ADMONISHED for his acts of oppression in dismissing the herein complainant without due process of law, with a stern warning that future misconduct in office will be dealt with more severely.

Done in the City of Manila, this 26th day September in the year of Our Lord, nineteen hundred and ninety-one.

By the President:

Macario A. Asistio, Jr.

Franklin M. Drilon
FRANKLIN M. DRILON
Executive Secretary