

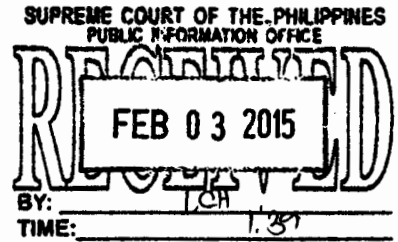


Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 26, 2014 which reads as follows:*

**“G.R. No. 159645 – MARIA VICTORIA F. DE CASTRO, Petitioner, v. METROPOLITAN MANILA DEVELOPMENT AUTHORITY, Respondent.**

This direct appeal by petition for review on *certiorari* was taken to the Court from the adverse decision rendered on May 16, 2003 by the Regional Trial Court, Branch 59, in Makati City in Civil Case No. 02-497.<sup>1</sup>

Civil Case No. 02-497 is an action for specific performance and injunction, to prevent respondent Metropolitan Manila Development Authority (MMDA) from taking cognizance of the administrative case charging the petitioner with misconduct and dishonesty even after her having already been separated from the service.<sup>2</sup>

The petitioner was employed as a parking aide by MMDA from March 1, 1983 until January 31, 2000. Prior to her separation from the service, Brig. Gen. Ernesto K. Maristela of the MMDA was investigating an incident involving the alleged issuance of fake United Vehicular Volume Reduction Program (UVVRP) exemptions based on a report by one Alice Santos. The name of the petitioner was mentioned in said report, prompting Gen. Maristela to summon and to require her to submit her *sinumpaang salaysay* to MMDA’s Eduardo Marcelo. Gen. Maristela then submitted a report to the Chairman of MMDA and forwarded the documents he had gathered thus far to the Legal Service of MMDA. Thereafter, in December 1999, Investigating Officer Atty. Annunciation Ayo initiated a preliminary investigation.

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<sup>1</sup> *Rollo*, pp. 17-21; penned by Presiding Judge Winlove M. Dumayas.

<sup>2</sup> *Id.*

During the pendency of the preliminary investigation, the petitioner applied for voluntary separation from the service pursuant to Republic Act No. 7924 and Republic Act No. 6656. MMDA approved her application. She then sought and was issued certificates of clearance by MMDA and the Office of the Ombudsman. She received from MMDA the memorandum dated January 31, 2000 notifying her that her services would automatically cease effective at the close of the office hours of January 31, 2000, and that she would be entitled to separation benefits equivalent to 1¼ monthly salary for every year of service pursuant to Section 11 of the law establishing MMDA. By virtue of the approved voluntary separation from the service, her employment as a parking aide of MMDA ceased on January 31, 2000.

On February 24, 2000, while she was following up her separation benefits, she received from MMDA a copy of the formal charge accusing her of misconduct and dishonesty (Administrative Case No. 02-04-02). It appears that the formal charge was filed on February 7, 2000 after due recommendation by Director Socorro Curzada of the Legal Service Department of MMDA.

The petitioner moved to dismiss the formal charge on the ground of lack of jurisdiction over her by reason of her being already separated from the service, but her motion was denied on June 29, 2001. She then refused to answer the formal charge. Accordingly, MMDA's hearing officer proceeded with the hearing *ex parte*.<sup>3</sup>

In the meanwhile, the petitioner's separation benefits were withheld pending the outcome of the investigation.

Feeling aggrieved, the petitioner commenced Civil Case No. 02-497 in the RTC. On May 16, 2003, the RTC rendered its assailed decision,<sup>4</sup> the pertinent portion of which follows:

The Court is confronted with the following issues, to wit:

1. Whether or not the defendant MMDA may take cognizance of Administrative Case No. 02-04-02 charging plaintiff of Misconduct/Dishonesty which was filed after the latter was separated from service.

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<sup>3</sup> Id. at 17-18.

<sup>4</sup> Supra note 1.

2. Whether or not the Plaintiff is entitled to the reliefs prayed for regarding the payment of separation benefits, attorney's fees and costs.

As regards the first issue, it is understood that the disciplining authorities may exercise disciplinary jurisdiction only over its own personnel, and officers and employees under its institutional supervision (Disciplinary Rules and Procedures in the Philippine Civil Service, Abelardo Subido, [1976]). Hence, it is crucial to determine whether the exercise of the disciplinary jurisdiction was made at the time when the plaintiff was still employed with the defendant MMDA. As the MMDA is a government agency duly created under Republic Act No. 7924, the exercise of disciplinary authority over its own personnel is governed by law. Under Section 48 Chapter 7 of Executive Order No. 292, Administrative proceedings may be commenced against an employee either by the Head of the office concerned or upon the filing of a complaint of any person. In the case at bar, the administrative proceeding against the plaintiff was begun only upon the filing of the formal charge on February 7, 2000, a week after the date of effectivity of Plaintiff's separation from service on January 31, 2000.

Defendant contends that an on-going investigation was being undertaken against the Plaintiff when the latter applied for her voluntary separation from service, and the subsequent approval of such application contravenes Section 8 of Rule XVIII Rules Implementing Book V of Executive Order 292 which states:

Sec. 8. No officer or employee under administrative investigation shall be allowed to resign pending decision of his case.

In case of compulsory retirement, the case shall continue to be investigated for purposes of determining the employee's entitlement to retirement benefits. The disciplinary authority shall decide the case within ninety (90) days.

The defendant posits that the administrative investigation referred to under the stated rule must not be given a restrictive meaning and therefore includes the preliminary investigation conducted against the Plaintiff. Defendant also cites *Sybang vs. Mendez* (287 SCRA 84 [1998]) and *Tuliao vs. Ramos* (284 SCRA 378 [1998]) to show that separation from service does not render the pending administrative case moot and academic and invokes the doctrine that estoppel does not operate against the government for the act of its agents and the MMDA is therefore not estopped from pursuing the administrative case despite the granting of the voluntary separation.

Defendant's contention is without merit. The administrative investigation under Section 8 of Rule XVIII, Rules Implementing Book V of Executive Order 292 is one made pursuant to the institution of an Administrative case against the employee concerned as the prohibition

was meant to avoid the frustration of the administrative proceeding through the acceptance of the resignation of the employee concerned. There is therefore no obstacle to the granting of Plaintiff's clearances from the Office of the Ombudsman and the MMDA itself. The cases of Sybang and Tuliao cited by the defendant are inapplicable in the case at bar since the Plaintiff's separation from service preceded the filing of the administrative case against her. Neither does the doctrine that estoppel does not operate against the government find application in the instant case as the issue involved is one of jurisdiction which is necessarily conferred by law and a sine qua non requirement for the exercise of disciplinary jurisdiction over a person is that such person should be a subordinate or employee. On the first issue therefore, defendant MMDA could not have lawfully exercised disciplinary jurisdiction over the Plaintiff as the latter has ceased to be an employee prior to the institution of the administrative proceeding.

As to the second issue, the plaintiff contends that the Memorandum issued to her by the defendant constitutes a contract between the parties which the defendant has breached when the latter withheld the payment of the separation benefits. The plaintiff therefore prays that this Court grant the action for specific performance in order to compel the defendant to comply with its obligation to pay the separation benefits owing the plaintiff.

A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service (Art. 1305, New Civil Code of the Philippines). Plaintiff's theory is untenable because the essential requisite of consent is absent in this case. The memorandum was issued by the MMDA not having the creation of a contract in view but only to serve as a notice of the approval of the voluntary separation from service which plaintiff has applied for. Plaintiff's action for specific performance will not lie in the instant case.

The separation pay owing to the plaintiff is in the nature of an obligation created by law which the Defendant may be held liable for. As stated in the Memorandum itself the Plaintiff is entitled to one and one fourth (1 ¼) monthly salary for every year of service as provided under Section 11 of the MMDA Law. As there is no reason for the MMDA to continue the withholding of the payment of Plaintiff's separation pay such legal obligation may be enforced against the defendant through the extraordinary remedy of Mandamus provided that all the requisites have been duly satisfied. Section 3 of Rule 65 of the Rules of Court provides:

Section 3. Petition for Mandamus - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other

plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

A petition for mandamus requires that the petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Well settled is the rule that no recourse to the Courts can be had until all administrative remedies have been exhausted, and special civil actions have been held not entertainable if superior administrative officers could grant relief (*Peralta vs. Salcedo*, 101 Phil. 452 [1957]; *Ang Tuan Kai & Co. vs. Import Control Comm.*, 91 Phil. 143 [1952]). In the instant case the Plaintiff failed to bring her case to the attention of the Civil Service Commission. A government agency which can remedy the plaintiff's situation and such omission is fatal to her cause.

WHEREFORE, premises considered, the instant case is hereby dismissed for lack of merit. No costs.

SO ORDERED.

Hence, this direct recourse to the Court, with the petitioner praying that MMDA be declared to have no jurisdiction to try her in Administrative Case No. 20-04-02; and that MMDA be ordered to cease and desist from proceeding against her in such administrative case, and be further ordered to pay her separation pay.

The petition for review lacks merit.

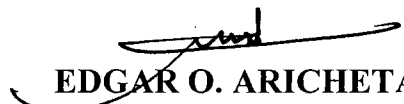
The disquisition of the RTC fully explained the rights and obligations of the parties, particularly those of the petitioner, and, to an extent, even sided with her by holding that MMDA could not anymore subject her to administrative disciplinary investigation by virtue of her intervening separation from the service. The disquisition did not contain any errors of judgment on the part of the RTC, which even correctly indicated to her that she should bring a special civil action for *mandamus*

instead in order to compel MMDA to settle her separation pay. Hence, her proper course of action should be *mandamus* instead of coming directly to the Court for redress. The dismissal of her action for specific performance is thus fully warranted.

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.”** **PERLAS-BERNABE, J.**, on leave;  
**VILLARAMA, JR., J.**, acting member per S.O. No. 1885 dated  
November 24, 2014.

Very truly yours,

  
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Division Clerk of Court *118*  
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(Civil Case No. 02-497)

The Solicitor General (x)  
Makati City

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