



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 June 2020** which reads as follows:*

“**G.R. No. 251527 (FOI Jubelle James B. Toledo v. S/Supt. Samuel Tadeo, BFP)**. – Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules on Civil Procedure thereby assailing the Decision¹ of the Honorable Court of Appeals (CA), Twentieth Division, Cebu City in CA-G.R. SP No. 12627 dated 31 May 2019 and its Resolution,² denying petitioner’s Motion for Reconsideration, promulgated on 9 January 2020. Petitioner argues that this petition involves a Constructive Dismissal case which amounts to a violation of his right to due process of law since his re-assignment is considered arbitrary and his subsequently dropping from the rolls, as illegal for being in violation of his constitutional right to security of tenure. Petitioner likewise contends that his appeals should not have been dismissed by the Civil Service Commission (CSC) and the CA on mere technicalities by giving more weight on technical rules rather than the constitutional guarantee of due process and security of tenure.³”

The Facts

Records show that the instant case arose out of the issuance by Senior Superintendent Samuel C. Tadeo of the Bureau of Fire Protection (BFP), Regional Office VII (RO VII) of the subject Regional Order No. REA 2017-10-042 dated 13 October 2017 (Re-assignment Order). The subject Order provided for the reassignment of Jubelle James B. Toledo (Toledo), Fire Officer I, BFP from Talisay City Fire Station to Daanbantayan Fire Station, Cebu.⁴

¹ *Rollo*, pp. 113-115. Penned by Associate Justice Emily R. Aliño-Geluz, with Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, concurring.

² *Id.* at 131-133. Penned by Associate Justice Emily R. Aliño-Geluz, with Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, concurring.

³ *Id.* at 4.

⁴ *Id.* at 102.

Subsequently, in a BFP RO VII Memorandum dated 23 October 2017, Ferdilino D. Condino (Condino), Senior Fire Officer 2, Acting Municipal Fire Marshall, informed Ronaldo V. Obeta (Obeta), Cebu Provincial Fire Marshall, that Toledo has not reported for duty since the release of the re-assignment order. To bolster his claim, Condino attached the machine copies of the station's Duty Detail Logbook showing the absences incurred by Toledo. Thereafter, Toledo filed an Appeal assailing the legality of the re-assignment Order.⁵

Two (2) months from the issuance of the aforesaid BFP RO VII Regional Order No. REA 2017-10-042, herein petitioner Toledo never showed up and reported for duty at his new unit assignment in Daanbantayan Fire Station, thus, prompting respondent Condino to issue a Report to Work Order dated 12 December 2017. The said Report to Work Order was mailed in his last known address on 12 December 2017⁶ and was duly received by a certain Kyla Toledo on 28 December 2017.⁷ As a result, Acting Municipal Fire Marshall Condino submitted a Report dated 17 January 2018 to the BFP RO VII Regional Director relative to the Absence Without Official Leave (AWOL) of petitioner Toledo for the latter's failure to report for duty at Daanbantayan Fire Station. Thereafter, respondent Condino recommended that petitioner be Dropped from the Rolls.⁸

Pursuant to BFP RO VII Regional Order No. DRP 2018-02-001 dated 14 February 2018, Tadeo dropped Toledo from the rolls after having been continuously on AWOL for more than thirty (30) working days.⁹

The Proceedings Before the Civil Service Commission

On 6 November 2017, petitioner filed an Appeal thereby assailing his re-assignment order as contained in BFP RO VII Regional Order No. REA 2017-10-042 dated 13 October 2017 with the CSC RO VII. He also filed a separate Appeal dated 18 April 2018 assailing the validity of BFP RO VII Regional Order No. DRP 2018-02-001 dated 14 February 2018 (Dropping from the Rolls) issued by Tadeo for absence without leave.¹⁰

CSC RO VII forwarded both Appeals to the CSC for appropriate action pursuant to Joint Resolution No. 18-00160 dated 28 May 2018, the dispositive portion of which reads:

WHEREFORE, pursuant to the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS); both appeal from re-assignment and appeal from dropping from the rolls of FO1 Jubelle James B. Toledo of the Bureau of Fire Protection are hereby **FORWARDED** to the Honorable

⁵ Id. at 104.

⁶ Id. Certification dated January 31, 2018 issued by the Postmaster of the Philippine Postal Corporation-7, Minglanilla Post Office, Cebu.

⁷ Id. Registry Return Receipt Card.

⁸ Id. at 104-105.

⁹ Id. at 105.

¹⁰ Id. at 102.

Commission for its appropriate action. Consequently, in so far as his Office is concerned, the instant cases are hereby deemed closed and terminated.¹¹

In an Order No. 18-0349 dated 12 November 2018, the Office for Legal Affairs, CSC, dismissed both appeals for being filed out of time, the dispositive portion of which reads:

WHEREFORE, the Appeals dated November 6, 2017 and April 18, 2018 filed by Jubelle James B. Toledo, Fire Officer I, Bureau of Fire Protection (BFP), is hereby **DISMISSED** for being filed out beyond the reglementary period to appeal.¹²

Aggrieved, petitioner Toledo filed a motion for reconsideration on the dismissal of his appeal which motion was denied by the CSC for failure to present any new evidence or raise any valid arguments to warrant a reversal or modification thereof.¹³ The dispositive portion of the CSC reads:

WHEREFORE, the Motion for Reconsideration filed by Jubelle James B. Toledo, Fire Officer I, Bureau of Fire Protection (BFP), is hereby **DENIED**. Accordingly, Office for Legal Affairs (OLA) Order No. 18-0349 dated November 12, 2018, **STANDS**.¹⁴

The Proceedings Before the Court of Appeals

Petitioner filed a Petition for Review under Rule 43 of the Rules of Court assailing the Decision dated 12 November 2018 and Order dated 8 March 2019 of the CSC. On 31 May 2019, the CA rendered a decision thereby dismissing the petition as it was filed beyond the 15-day reglementary period as provided under Section 4, Rule 43 of the Rules of Civil Procedure.¹⁵

In addition, the appellate court noted several infirmities in the petition, to wit:

- 1.) Petitioner failed to append an Affidavit of Service, in violation of Section 13, Rule 13, of the Rules of Court;
- 2.) Petitioner merely attached a photocopy of the assailed CSC Order dated November 12, 2018 and March 8, 2019, in violation of Section 6, Rule 43 of the Rules of Court;
- 3.) In the Verification and Certification against Forum Shopping, no competent evidence as to the identity of the petitioner was shown, i.e. at least one current identification document issued by an official agency bearing the photograph and signature of the petitioner, in violation of Section 12, Rule II of the 2004 Rules on Notarial Commission; and
- 4.) Petitioner personally filed the instant Petition without the assistance of a counsel.¹⁶

¹¹ Id. at 85.

¹² Id. at 107.

¹³ Id. at 108.

¹⁴ Id. at 111.

¹⁵ Id. at 113.

¹⁶ Id. at 114.

Petitioner subsequently filed a motion for reconsideration of the appellate court's resolution, but the same was nonetheless, denied in a Resolution dated 9 January 2020.¹⁷

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA gravely erred in dismissing the petition for review for being filed out of time.

The Court's Ruling

The petition has no merit.

It must be stressed that "the right to appeal is not a natural right or part of due process; it is merely a statutory privilege which may be exercised only in accordance with the provision of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost."¹⁸ Verily, compliance with procedural rules is a must, "since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."¹⁹ It should be further emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.²⁰

In the case of *Daikoku Electronics Phils., Inc. v. Raza*,²¹ the high court ruled: "To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice. x x x The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse."

In the present petition, petitioner was not able to provide this Court of any cogent reason as to why *We* should allow a liberal treatment of the provision on appeal under the Rules of Court. He failed to provide any cogent and justifiable reason for this court to relax the rules to accommodate his appeals which were obviously filed out of time. After all, it is a well – established rule that a party seeking for a liberal interpretation of a provision in the Rules of Court has the burden of proving that he is deserving for the

¹⁷ Id. at 131.

¹⁸ See *Manila Mining Corporation v. Amor*, 758 Phil. 268, 277 (2015).

¹⁹ *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

²⁰ *De Leon v. Hercules Agro Industrial Corp.*, 734 Phil. 652, 662 (2014), citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, 700 Phil. 749, 755 (2012).

²¹ 606 Phil. 796, 803 (2009).

suspension of the Rules of Court. However, the arguments raised by the petitioner in this petition is simply insufficient. Here, petitioner argues that he was deprived of his Constitutional and Procedural Right to due process. Unfortunately, *We* are not convinced. He was given his day in court but chose not to exercise it on time. To relax the rules in order to accommodate petitioner's flimsy excuse of not filing his appeals on time will make a mockery of the tools designed to facilitate the adjudication of cases that this Court follows to ensure an orderly and speedy administration of justice.

Even if the Court looks beyond Toledo's procedural misstep, his petition must fail because of the two following reasons:

First, petitioner being a Government Employee is covered by the CSC as provided under Section 6 of Chapter 2 of The Revised Administrative Code of 1987.²² Meanwhile, cases filed against Government Employees pertaining to acts related to their capacity as Government Employees is covered by the Revised Rules on Administrative Cases in the Civil Service.

Second, petitioner's name was dropped from the Rolls for having been continuously on AWOL for more than thirty (30) working days after the Reassignment Order was issued. Section 93, Rule 19 of the Revised Rules on Administrative Cases in the Civil Service provides:

Section 93. Grounds and Procedure for Dropping from the Rolls. — Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

a. Absence Without Approved Leave

1. An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He/She shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be sent to the address appearing on his/her 201 files or to his/her last known address;
2. If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work order shall be served on the official or employee at his/her last known address on record. Failure on his/her part to report to work within the period stated in the order shall be a valid ground to drop him/her from the rolls; and
3. If it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences through less than thirty (30) working days, three (3) times in a semester, such that a pattern is

²² Section 6. *Scope of the Civil Service.* — (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. (2) Positions in the Civil Service shall be classified into career service and noncareer service.

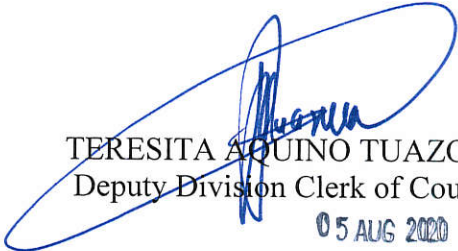
already apparent, dropping from the rolls without notice may likewise be justified.

Petitioner's situation falls squarely as one of the grounds for dismissal from service as clearly provided from the provision cited above. Hence, his absence without leave for more than 30 days is simply intolerable and consequently deserves sanction under the Revised Rules on Administrative Cases in the Civil Service.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision of the Honorable Court of Appeals, Twentieth Division, Cebu City in CA-G.R. SP No. 12627 dated 31 May 2019 and its Resolution, denying petitioner's Motion for Reconsideration, promulgated on 9 January 2020, are hereby **AFFIRMED**.

SO ORDERED." (*J. Gaerlan, designated Additional Member per Special Order No. 2780 dated May 11, 2020.*)

Very truly yours,


 TERESITA AQUINO TUAZON
 Deputy Division Clerk of Court *Unit 814*
 05 AUG 2020

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