

MUST READ



**HERRAS, Valerio Jr. R., et al.**  
 Re: Grave Misconduct and Gross Neglect of Duty  
 (Appeal)  
 x-----x

Number: 120080  
 Promulgated: 31 JAN 2012

**DECISION**

The Civil Service Commission Regional Office (CSCRO) No. IV, Quezon City, in a Memorandum dated November 2, 2010, forwarded to the Commission for appropriate action, the complaint for illegal dismissal filed by Valerio R. Herras, Jr., Leopoldo H. Murillo and Carlito H. Escullar, all employees of the Tagkawayan Water District (TWD), Tagkawayan, Quezon, pursuant to **Section 5 (A) of the Uniform Rules on Administrative Cases in the Civil Service (URACCS)**<sup>1</sup>. Evaluation of the CSCRO No. IV reveals that the said complaint is in effect an appeal from the separate decisions issued by TWD General Manager (GM) Cirilo T. Frondoso, dismissing Herras and Murillo from the service for alleged Grave Misconduct and Gross Neglect of Duty and suspending Escullar from the service for three (3) months without pay for alleged Neglect of Duty.

The decision dated April 30, 2008 of GM Frondoso suspending Escullar from the service reads in part, as follows:

*“Sa dahilang nagkaroon ka na naman ng paglabag sa TWD Rules & Regulation for Pump Operators at CSC Rules (Negligence of duty) dahil ilang beses kang wala sa iyong work assignments bilang Pump Operator sa Bamnan at Sakang Pumping Stations at hindi paglalagay ng chlorine sa chlorinator, kung kaya ikaw ay magkakaroon ng suspension without pay ng tatlong (3) buwan simula Mayo 1, 2008 hanggang July 31, 2008 kasama na din ang hindi mo pagtanggap ng mga dapat mong tanggapin sa mga buwang nabanggit. Ito ay kaparusahan sa iyong nagawa at sa susunod na maulit na naman ang ganitong pangyayari ay pagkatanggal na sa iyong trabaho ang magiging kaparusahan mo.”*

<sup>1</sup> Section 5. Jurisdiction of the Civil Service Commission Proper

*In a Race to Serve: Responsive, Accessible, Courteous and Effective Public Service*

The decision dated November 21, 2008 of GM Frondoso dismissing Herras from the service reads in part, as follows:

*"Dahil ikaw ay ilang beses nang lumalabag sa ating mga alituntunin gross neglect of duty, ikaw ay mapaparusahan na ng dismissal. Simula sa araw na ito, November 21, 2008."*

On the other hand, the decision dated January 29, 2009 of GM Frondoso dismissing Murillo from the service reads, as follows:

*"Bilang kaparusahan sa mga nagawa mong kamalian, gross neglect of duty at misconduct ikaw ay mapaparusahan ng pagkatanggal sa trabaho, simula ngayon, Enero 29, 2009."*

In their joint complaint, Herras, et al., through counsel, stated that:

"1. *Complainants were not afforded opportunity to be heard; No due process.*

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x x x

"2. *Complainants entitled to payment of overtime pay*

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x x x

"3. *Complainants entitled to backwages, moral and exemplary damages and attorney's fees.*

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x x x



On the other hand, the TWD, though counsel, submitted its Comment to the complaint stating, as follows:

"COMPLAINANTS VALERIO HERRAS & LEOPOLDO MURILLO WERE LEGALLY DISMISSED FROM THEIR EMPLOYMENT AS THEY WERE AFFORDED DUE PROCESS OF LAW PRIOR TO THEIR TERMINATION.

x x x

*"THIS WAS DONE IN THIS CASE. Complainants Herras and Murillo were dismissed by the respondents after giving them all the opportunity to defend themselves prior to their dismissal. The records of the TWD x x x will clearly show that they were informed of the charges against them. They were afforded their day in court when they were given the chance to explain their side as evidenced by the Explanations submitted by them. And after thorough consideration of the facts at hand and the gravity of their offenses, they were informed of the nature and cause of their dismissal.*

x x x

"COMPLAINANTS VALERIO HERRAS, LEOPOLDO MURILLO & CARLITO ESCULLAR WERE NOT ENTITLED TO OVERTIME PAY.

*"It must be emphasized that the complainants, like all other employees under the Civil Service Law, are monthly paid employees. Overtime pay is allowed only if it is requested, approved or authorized by the head of the concerned agency and subject to the usual auditing and accounting requirements and shall be out only of the savings from personal services appropriation of the concerned agency.*

x x x

"COMPLAINANTS VALERIO HERRAS, LEOPOLDO MURILLO & CARLITO ESCULLAR WERE NOT ENTITLED TO BACKWAGES, MORAL & EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

*"In the same manner, complainants are not entitled to back wages, moral and exemplary damages, as well as attorney's fees. Their dismissal from the service was done after faithfully complying with the requirements of the law on DUE PROCESS. Their dismissal from employment is sanctioned by law."*



Records show that Herras, Murillo and Escullar were all pump operators of the TWD. As narrated by the TWD, as early as July 8, 2005, Herras was given a Memorandum by the TWD General Manager, reminding him that he was being negligent in the performance of his duty as pump operator as he was allegedly being seen outside the TWD and not in his work station and allegedly refused to perform the work delegated to him. In said Memorandum, he was warned that a repetition of the same act will result in his suspension or even dismissal from the service. Herras allegedly remained negligent which caused the flooding of the three (3) pumps of the TWD resulting in the sudden stoppage of water service. Thus, another Memorandum was issued to him on March 9, 2006, suspending him from the service without pay for fifteen (15) days.

Thereafter, Herras allegedly did not mend his negligent ways and was reported to be drinking outside his workplace. Another Memorandum dated November 7, 2006 was issued to him requiring him to explain why he left his work station during office hours and seen drinking outside the office premises. Herras submitted an Explanation, allegedly admitting the accusation. However, the TWD General Manager did not impose any penalty but merely warned him, as Herras promised to change his ways.

However, on January 12, 2008, Herras again left his work station, went to town and had a drinking session with a co-employee. Thus, he received another Memorandum dated January 14, 2008 from the TWD GM, reminding him of his duties and responsibilities with a warning that a repetition of the same act would result in the termination of his service. On November 20, 2008, a similar incident allegedly happened when Herras left his work station and had a drinking spree with a co-pump operator. Thus, in the aforementioned decision dated November 21, 2008, GM Frondoso dismissed Herras from the service.

As regards Murillo, as early as October 20, 1997, he was suspended from the service for fifteen (15) days without pay, for his alleged negligence causing overflowing of chlorine in the chlorination tank, disrespect to his superior and leaving his work station at night without permission from his supervisor. Then, on November 7, 2005, Murillo was allegedly found sleeping during working hours and failed to operate the pump station at Bamban, thus, a Memorandum dated November 10, 2005 was issued to him, warning him that a repetition of the same act will result in his suspension or dismissal from the service. Thereafter, on January 22, 2009, Murillo was the subject of an investigation regarding the malfunctioning and burning of the motor pump at the Sakang work station. He was made to explain his side through a Memorandum dated January 22, 2009. Murillo submitted his Explanation dated January 27, 2009, denying the accusations. Finding his answer unsatisfactory and after considering the previous acts of Murillo, the TWD General Manager issued the aforementioned decision dated January 29, 2009, dismissing him from the service for Gross Neglect of Duty and Misconduct.



On the other hand, Escullar was also the subject of several Office Memoranda relative to his alleged negligence as pump operator. The recent TWD Memorandum dated April 29, 2008 directed him to explain his unauthorized absences and his alleged failure to put chlorine in the station chlorinator. Escullar submitted his Explanation dated April 30, 2008, admitting his negligence and asking for another chance for the sake of his family. However, finding his explanation unsatisfactory and considering his previous acts, the TWD General Manager issued the aforementioned decision dated April 30, 2008, suspending Escullar from the service for three (3) months without pay.

Subsequently, Herras, Murillo and Escullar filed a complaint dated March 4, 2009 for illegal dismissal and non-payment of overtime work before the CSCRO No. IV. An evaluation however by the CSCRO No. IV revealed that the complaint was in effect an appeal from the aforementioned TWD decisions dismissing/suspending Herras, *et al.* from the service, thus within the jurisdiction of the Commission pursuant to Section 5 (A) of the URACCS. Hence, their complaint is treated as appeal.

After an evaluation of the entire records of the case, the Commission rules to dismiss the instant appeal.

It was sufficiently established, based on records, that Herras, *et al.*'s appeal before the Commission was filed out of time. The assailed decision of GM Frondoso dismissing Herras from the service was issued as early as November 21, 2008. On the other hand, the decision of GM Frondoso dismissing Murillo from the service was issued on January 29, 2009 while the decision suspending Escullar from the service for three (3) months was issued as early as April 30, 2008. Thus, their appeal (complaint) previously filed before the CSCRO No. IV on March 4, 2009, is dismissible outright for failure to perfect the same within the reglementary period provided under **Section 43 of the URACCS**, thus:

*"Section 43. Filing of Appeals. - Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.*

*"In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.*




*“A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days, to the appellate authority.” (Underscoring supplied)*

Clearly, the assailed decisions of the TWD had long become final and executory when no motion for reconsideration or appeal was interposed by the concerned parties within the aforementioned period provided by the rules. Jurisprudence teems with pronouncements that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. Failure to perfect an appeal renders the judgment of the court or quasi-judicial body or tribunal final and executory<sup>2</sup>. Of relevance is the ruling of the Commission in the similar case of **PICAZO, Felipe G. (FLORES, Romulo B.), CSC Resolution No. 07-1561 dated August 6, 2007** where it held, as follows:

*“The Commission finds that the CSCRO No. I did not err in dismissing the complaint not only for Flores’ utter failure to present evidence to substantiate his allegations but more importantly, for indirectly assailing/questioning a decision which has long become final and executory. Flores had fifteen (15) days from receipt of the assailed Decision dated September 11, 2001 within which to file and perfect his appeal with the Commission. However, he instead went to the RTC via a Petition for Certiorari. Thus, the aforementioned decision rendered by Picazo became and final and executory as no motion for reconsideration or appeal was interposed before the proper forum, the CSC, within the prescribed period pursuant to Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Section 5 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS).”*

x x x

*“Thus, Flores’ complaint which questioned the decision of the MLUWD for, among others, being contrary to law, and which was filed before the CSCRO No. I only on March 21, 2006 x x x is dismissible outright. It bears stressing that his filing before the CSCRO No. I is even erroneous as it is the Commission Proper, pursuant to the aforementioned Section 5 of the URACCS, which has jurisdiction over decisions rendered by heads of agencies imposing penalties exceeding thirty (30) days.”*  
(Underscoring supplied)



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<sup>2</sup> Tan vs. Court of Appeals, G.R. No. 157194 dated June 20, 2006

It is clear from the foregoing that the filing of an appeal or complaint before a wrong forum will not suspend the running of the period within which to perfect an appeal. Instructive further is the ruling of the Supreme Court in **Calucag vs. COMELEC, G.R. No. 123673 dated June 19, 1997**, as follows:

*“Therefore, the COMELEC is the proper appellate court clothed with jurisdiction to hear the appeal, which appeal must be filed within five days after the promulgation of the MTC's decision. The erroneous filing of the appeal with the RTC did not toll the running of the prescriptive period. Petitioner filed his notice of appeal only on August 12, 1994, or one month and twenty six days from the time he received a copy of the MTC's decision on June 16, 1994. The five-day period, having expired without the aggrieved party filing the appropriate appeal before the COMELEC, the statutory privilege of petitioner to appeal is deemed waived and the appealed decision has become final and executory.”*

*“Petitioner's contention that the COMELEC erred in disallowing the case based on sheer technicalities is likewise unmeritorious. The COMELEC dismissed petitioner's appeal for lack of appellate jurisdiction, based on his failure to perfect his appeal on time. That this is NOT A TECHNICALITY is correctly pointed out in the questioned order citing various jurisprudence. Granting that petitioner paid the appeal fees on time, he chose the wrong forum; the payment, therefor, having been done after the lapse of the reglementary period to appeal. x x x The right to appeal is a mere statutory privilege and may be exercised only in the manner-prescribed by, and in accordance with, the provision of the law.”*

*“WHEREFORE, in view of the foregoing, the Order of the Commission on Elections en banc dated February 1, 1996, DISMISSING the instant case for lack of appellate jurisdiction, is hereby AFFIRMED.”*  
(Underscoring supplied)

As can be gleaned from the aforequoted decision, the Supreme Court categorically stated that the decision dismissing the case for failure of respondent to perfect his appeal within the reglementary period, should not be taken as a decision based on sheer technicalities only. On the contrary, the decision was based on lack of jurisdiction as the impugned decision had long become final and executory. Thus, as held in a number of cases, the right to appeal is a mere statutory privilege that may be exercised only in the manner prescribed by, and in accordance with, the provision of the law.

In view thereof, the Commission rules to dismiss the instant appeal and declares the assailed TWD decisions as final and executory.



**WHEREFORE**, the appeal of Valerio R. Herras, Jr., Leopoldo H. Murillo and Carlito H. Escullar is hereby **DISMISSED**. Accordingly, the separate decisions issued by the Tagkawayan Water District (TWD), Tagkawayan, Quezon, dismissing Herras and Murillo from the service for alleged Grave Misconduct and Gross Neglect of Duty and suspending Escullar from the service for three (3) months without pay for alleged Neglect of Duty, are **AFFIRMED**.

The Civil Service Commission Regional Office (CSCRO) No. IV, Quezon City, is hereby directed to monitor the implementation of this Decision and to submit a report of compliance to the Commission within five (5) days from receipt of this Decision.

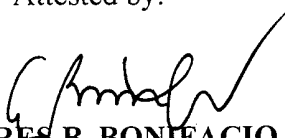
Quezon City.

  
MARY ANN Z. FERNANDEZ-MENDOZA  
Commissioner

  
FRANCISCO T. DUQUE III  
Chairman

**On Leave**  
RASOL L. MITMUG  
Commissioner

Attested by:

  
DOLORES B. BONIFACIO  
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