

VILMA E. ROMAGOS v. METRO CEBU WATER DISTRICT, et al.
G.R. No. 156100, 12 September 2007
Austria-Martinez, J. (Third Division)

Before an officer or employee may be dropped from the rolls for mental incapacity, the following elements and process must obtain: first, that it has been observed that the subject officer or employee has been behaving abnormally for an extended period; second, that it has been established through substantial evidence that such abnormal behavior manifests a continuing mental disorder and incapacity to work; third, that a written notice is issued by the subject's immediate supervisor, describing the former's continuing mental disorder and incapacity to work and citing the reports of his co-workers or immediate supervisor, as confirmed by the head of office; and finally, that another notice is issued by the appointing authority or head of office, informing the subject of his separation from the service due to mental incapacity. Thus, a declaration of mental disorder does not automatically translate to a judgment of mental incapacity to perform work.

Vilma E. Romagos is an employee at the Metro Cebu Water District (MCWD). Two incident reports were submitted by her co-employees stating that during a meeting and office hours, Romagos suddenly and without provocation began rambling loudly and incoherently, causing alarm and anxiety among office visitors and employees. In 1989 and 1999 respectively, a Certification was issued by Dr. Costas and Dr. Obra stating that Romagos is suffering from Major Depression. However on August 20, 1999 a medical certification issued by Dr. Obra categorically declared Romagos "physically and mentally fit to go back to work". Thereafter, on August 9, 1999, Romagos was denied entry into the work premises by MCWD unless she undergoes psychiatric treatment and is certified by her doctor to be mentally fit to work. Eventually, in a letter dated December 1, 1999, MCWD informed Romagos that, effective January 1, 2000, she was being dropped from the rolls for mental incapacity. Romagos filed with the CSC Regional Office (CSCRO) a Complaint-Appeal, questioning the procedure and factual basis of her dismissal. In dismissing her appeal, it held that the evidence cited by MCWD in its letter, as well as new evidence presented by MCWD General Manager Dulce M. Abanilla (Abanilla), where Romagos was observed to again utter incoherent words and become hysterical, and submitted reports that are incomprehensible, incoherent established that the latter was mentally incapacitated. CSC affirmed the CSCRO Decision. In a petition for review with the CA, Romagos questioned the CSC Resolutions for insufficiency of evidence and lack of due process. CA found that MCWD correctly declared Romagos mentally unfit.

ISSUES:

- 1) Whether or not the CA correctly held that there was proper procedure and substantial basis for MCWD to declare Romagos mentally unfit to work and drop her from the rolls
- 2) Whether Romagos's separation from the service is valid and if so, up to what extent is she entitled to award of backwages and other monetary benefits

HELD:

Petition GRANTED.

The procedure adopted by MCWD in dropping Romagos from the rolls substantially complied with the two-notice requirement of Memorandum Circular 40-98.

Under Section 46, Book V of Executive Order (E.O.) No. 292, one of the causes for separation from government service of an officer or employee is mental incapacity, *viz.*:

Sec. 46. x x x (b) The following shall be grounds for disciplinary actions: x x x (19) Physical or mental incapacity or disability *due to immoral or vicious habits.*

Separation from the service for such cause is done by way of a disciplinary proceeding governed by Rule II of CSC Memorandum Circular No. 19, series of 1999 (MC 19-99). The minimum procedural requirements thereof are: a) that notice of the charge be served on the officer or employee; and, b) that the latter be given opportunity to be heard.

While Section 46 of E.O. No. 292 is silent on this matter, mental incapacity *not* arising from immoral or vicious habits is also a cause for separation under Section 26 of E.O. No. 292 and Section 2(2), Article IX(B) of the 1987 Constitution, which demand of government officers and employees continuing merit and fitness. Separation from the service for such cause is carried out through a non-disciplinary process governed by CSC Memorandum Circular No. 40, series of 1998 (MC 40-98).

The only difference between the two modes of separation is that the first carries administrative disabilities, such as forfeiture of retirement benefits and perpetual disqualification from employment in the government service, while the second does not. But both result in loss of employment – a property right protected under the due process clause. Hence, even if considered a non-disciplinary mode of separation, dropping from the rolls due to mental incapacity not arising from immoral or vicious habits is subject to the requirements of due process, as prescribed in the following provisions of MC 40-98:

Rule XII

Section 2. *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:

x x x x

2.3 Physically and Mentally Unfit

a. An officer or employee who is continuously absent for more than one (1) year by reason of illness may be declared physically unfit to perform his duties and the head of office in the exercise of his sound judgment may consequently drop him from the rolls.

b. An officer or employee who is intermittently absent by reason of illness for at least 260 working days during a 24-month period may also be declared physically unfit by the head of office.

c. An officer or employee who is ***behaving abnormally for an extended period which manifests continuing mental disorder and incapacity to work as reported by his co-workers or immediate supervisor and confirmed by the head of office***, may likewise be dropped from the rolls.

For the purpose of the three (3) preceding paragraphs, notice shall be given to the employee containing a brief statement of the nature of his incapacity to work.

x x x x

2.6 This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical and mental incapacity is ***non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from employment in the government***,

2.7 The *written notice* mentioned in the preceding paragraphs may be signed by the person exercising immediate supervision over the official or employee. However, the *notice of separation* shall be signed by the appointing authority or head of office.

Clearly, before an officer or employee may be dropped from the rolls for mental incapacity, the following elements and process must obtain: first, that it has been observed that the subject officer or employee has been behaving abnormally for an extended period; second, that it has been established through substantial evidence that such abnormal behavior manifests a continuing mental disorder and incapacity to work; third, that a written notice is issued by the subject's immediate supervisor, describing the former's continuing mental disorder and incapacity to work and citing the reports of his co-workers or immediate supervisor, as confirmed by the head of office; and finally, that another notice is issued by the appointing authority or head of office, informing the subject of his separation from the service due to mental incapacity.

Thus, a declaration of mental disorder does not automatically translate to a judgment of mental incapacity to perform work. A window remains open for the affected officer or employee to counter opinion on his mental condition and to show that his ability to work remains unimpaired. Only then may the appointing authority or head of office decide on whether said officer or employee is no longer mentally capable of performing his work and should be discharged. These requirements are designed to obviate misuse of non-disciplinary modes of separation for petty vengeance or vicious harassment.

The procedure adopted by MCWD in dropping Romagos from the rolls substantially complied with the two-notice requirement of MC 40-98. MCWD issued to Romagos the August 5, 1999 letter, requiring her to undergo psychiatric evaluation.

MCWD sufficiently established that Romagos suffers from a mental disorder

The 1989 and 1991 medical certifications issued by Dr. Costas and Dr. Obra establish that Romagos was diagnosed to be suffering from Major Depression. The 1999 medical certification of Dr. Obra proves that, at the time of her separation from the service, Romagos was undergoing psychiatric treatment. The incident reports submitted by MCWD's employees uniformly indicate that Romagos is mentally disturbed. The latter's own letters and reports also reveal an abnormal mental condition. Moreover, Romagos' abnormal mental condition appears to be in a continuing state, considering that she was first diagnosed to be suffering from Major Depression in 1989, yet, in 1999, she was still undergoing psychiatric evaluation.

MCWD did not sufficiently prove that Romagos' mental condition has rendered her incapacitated to work as to justify her being dropped from the rolls

All that the 1989 and 1991 medical certifications established is that, during said periods, Romagos was diagnosed to be suffering from Major Depression. These certifications hardly prove that Romagos' behavior manifests a continuing mental disorder and incapacity to work. In fact, the 1991 medical certification of Dr. Obra points to the contrary for it states that Romagos "*may go back to work*" provided that she will come back for check up as scheduled. This view is bolstered by other documents of record, such as Romagos school transcripts, indicating that from 1980 to 1995 the latter took a graduate course in business administration at the Southwestern University. Such endeavor negates the notion that from the time of her first diagnosis in 1989 to the time of her separation in 1999, Romagos was suffering from a mental impediment to work.

Another evidence of Romagos' continuing capacity to work despite her mental condition is her performance ratings for 1996 and 1998, copies of which are of record. In both evaluations, Romagos' work performance was rated "very satisfactory."

More telling is the August 20, 1999 medical certification issued by Dr. Obra which categorically declared petitioner "*physically and mentally fit to go back to work.*"

While there is no question that at the time she was dropped from the rolls, Romagos was suffering from a protracted mental disorder, the same did not render her incapable of performing her work. There was therefore an incomplete cause or justification to drop her from the rolls.

Romagos's separation from the service invalid

Romagos is entitled to reinstatement to her former position with payment of backwages computed in accordance with our ruling in *Batangas State University v. Bonifacio, viz.:*

The Court of Appeals correctly ordered respondent's reinstatement. However, the award of backwages and other monetary benefits should not be limited to 5 years and must therefore be modified in line with the recent case of *Civil Service Commission v. Gentallan*. We held in said case that an illegally dismissed government employee who is later ordered reinstated is entitled to backwages *and other monetary benefits from the time of her illegal dismissal up to her reinstatement*. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left her office and should be given the corresponding compensation at the time of her reinstatement.