SUPREME COURT
EN BANC

BIENVENIDO NERA,
***Petitioner-Appellee*,**

-versus-

G.R. No. L-13160
January 30, 1960

PAULINO GARCIA, Secretary of Health, and TRANQUILINO ELICAÑO, Director of Hospitals,
***Respondents-Appellants*.**
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D E C I S I O N

MONTEMAYOR, *J.*:

Respondents are appealing the Decision of the Court of First Instance of Manila, dated October 30, 1957, ordering them to reinstate petitioner Bienvenido Nera to his former position as clerk in the Maternity and Children's Hospital, and to pay him his back salary from the date of his suspension until reinstatement.

The facts in this case are not in dispute. Petitioner Nera a civil service eligible, was at the time of his suspension, serving as clerk in the Maternity and Children's Hospital, a government institution under the supervision of the Bureau of Hospitals and the Department of Health. In the course of his employment, he served as manager and

cashier of the Maternity Employee's Cooperative Association, Inc. As such manager and cashier, he was supposed to have under his control funds of the association. On May 11, 1956, he was charged before the Court of First Instance of Manila with malversation, Criminal Case No. 35447, for allegedly misappropriating the sum of P12,636.21 belonging to the association.

Some months after the filing of the criminal case, one Simplicio Balcos, husband of the suspended administrative officer and cashier of the Maternity and Children's Hospital, named Gregoria Balcos, filed an administrative complaint against petitioner Nera, on the basis of the criminal case then pending against him. Acting upon this administrative complaint and on the basis of the information filed in the criminal case, as well as the report of the General Auditing Office to the effect that as a result of its examination of the accounts of Nera as manager and cashier of the association, he was liable in the amount of P12,636.21, the executive officer, Antonio Rodriguez, acting for and in the absence of the Director of Hospitals, required petitioner to explain within seventy-two hours from receipt of the communication, Exhibit D, why he should not be summarily dismissed from the service for acts involving dishonesty. This period of seventy-two hours was extended to December 20, 1956. Before the expiration of the period as extended, that is, on December 19, 1956, Nera received a communication from respondent Director of Hospital suspending him from office as clerk of the Maternity and Children's Hospital, effective upon receipt thereof. This suspension carried the approval of respondent Garcia, Secretary of Health.

The petitioner asked the PCAC to intervene on his behalf, which office recommended to respondents the lifting of the suspension of petitioner. Upon failure of respondents to follow said recommendation, petitioner asked respondents for a reconsideration of his suspension, which request was denied. Petitioner then filed the present special civil action of prohibition, *certiorari* and mandamus to restrain respondents from proceeding with the administrative case against him until after the termination of the criminal case; to annul the order of suspension dated December 19, 1956, and to compel respondents to lift the suspension. After hearing of this special civil action, the appealed decision was rendered. The trial court held that petitioner was illegally suspended, first because the suspension came

before he was able to file his answer to the administrative complaint, thereby depriving him "of his right to a fair hearing and an opportunity to present his defense, thus violating the due process clause"; also, that assuming for a moment that petitioner were guilty of malversation or misappropriation of the funds of the association, nevertheless, said irregularity had no connection with his duty as clerk of the Maternity and Children's Hospital.

In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence.

As to the holding of the trial court about dishonesty or misconduct in office having connection with one's duties and functions in order to warrant punishment, this involves an interpretation of Section 694 of the Revised Administrative Code, which for purposes of reference we reproduce below:

> "SEC. 694. Removal or suspension. — No officer or employee in the civil service shall be removed or suspended except for cause as provided by law.
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> "The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of his bureau or office. With the approval of the proper head of department, the chief of a bureau or office may likewise suspend any subordinate or employee in his bureau or under his authority pending an investigation, if the charge against such subordinate or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty." (Italics supplied).

It will be observed from the last four lines of the second paragraph that there is a comma after the words dishonesty and oppression, thereby warranting the conclusion that only the phrase "grave misconduct or neglect" is qualified by the words "in the performance of duty". In other words, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959, which refers to the same subject matter of preventive suspension, throws some light on this seeming ambiguity. We reproduce said section 34:

> "SEC. 34. Preventive Suspension. — The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service." (Italics supplied).

It will be noticed that it introduces a small change into Section 694 of the Revised Administrative Code by placing a comma after the words "grave misconduct," so that the phrase "in the performance of duty" instead of qualifying "grave misconduct or neglect", as it did under Section 694 of the Revised Administrative Code, now qualifies only the last word "neglect", thereby making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but that when he is charged with dishonesty, oppression or grave misconduct, these need have no relation to the performance of duty. This is readily understandable. If a Government officer or employee is dishonest or

is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot well tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the Government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. As the Solicitor General well pointed out in his brief, "the private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service."

It may not be amiss to state here that the alleged misappropriation involved in the criminal case is not entirely disconnected with the office of the petitioner. True, the Maternity Employee's Cooperative Association that owns the funds said to have been misappropriated is a private entity. However, as its name implies, it is an association composed of the employees of the Maternity and Children's Hospital where petitioner was serving as an employee. Moreover, if petitioner was designated to and occupied the position of manager and cashier of said association, it was because he was an employee of the Maternity and Children's Hospital. The connection though indirect, and, in the opinion of some, rather remote, exists and is there.

The trial court cites the cases of Mondano vs. Silvosa 97 Phil., 143; 51 Off. Gaz., [6], 2884 Lacson vs. Roque (92 Phil., 456; 49 Off. Gaz., 93), and others to support its holding that an official may not be suspended for irregularities not committed in connection with his office. These cases, however, involve elective officials who stand on ground different from that of an appointive officer or employee, and whose suspension pending investigation is governed by other laws. Furthermore, an elective officer, elected by popular vote, is directly responsible only to the community that elected him. Ordinarily, he is not amendable to rules of official conduct governing appointive officials, and so, may not be forthwith and summarily suspended, unless his conduct and acts of irregularity have some connection with

his office. Furthermore, an elective official has a definite term of office, relatively of short duration; naturally, since suspension from his office definitely affects and shortens this term of office, said suspension should not be ordered and done unless necessary to prevent further damage or injury to the office and to the people dealing with said officer.

In view of the conclusion that we have arrived at, we deem it unnecessary to discuss and determine the other questions raised in the appeal.

IN VIEW OF THE FOREGOING, the appealed Decision is hereby reversed, with costs.

Paras, *C.J.*, Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, Endencia, Barrera and Gutierrez David, *JJ.*, concur.