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CIVIL SERVICE

In the case of *Young v. Charity Hospital*[1] the issue was whether appeal rights to the State Civil Service Commission prescribed thirty days after an employee had been orally notified by her employing agency that a letter of dismissal had been mailed to her and a copy of such letter was exhibited to her even though, due to misaddressing, she never received the original letter which was returned to the agency by the post office.[2] A majority of the court were unwilling to bring such a procedure within the constitutional language of a dismissal "expressed in writing," and consequently were unwilling to acquiesce in the application, by the State Civil Service Commission, of its Rule 13.2,[3] which it construed to cut off the employee's rights upon the lapse of thirty days from such oral notification and exhibition of a copy of the letter of dismissal. Only one member of the court was willing to equate such notification procedure with the required "expression in writing" of the Constitution, and therefore to agree that the demand for a hearing was not timely. The majority of the court not only agreed that demand made after thirty days had elapsed from such a notification was timely but also went on to find that the employee's dismissal had been "without cause" and acquiesced in a decree on the merits, reinstating the employee in her former position and ordering that she be paid her back salary.[4]

Two members of the court, however, were of the opinion that, even though the demand of the appellant was found to be timely, the court should, within the mandate of the Constitution, remand it to the Commission since the Supreme Court has no

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1. 226 La. 708, 77 So.2d 13 (1954).

2. LA. CONST. art XIV, § 15(N)(1) provides: "No person in the State or Classified Service, having acquired permanent Civil Service Status, shall be demoted, dismissed, or discriminated against, except for cause, expressed in writing by the appointing authority. . . ."

3. LOUISIANA CIVIL SERVICE RULES 48 (1954). Rule 13.2 provides in pertinent part: "A person who alleges he has been deprived of his rights or otherwise been discriminated against. . . may, within 30 days of any such action, demand a hearing . . . ."

4. 226 La. 708, 716, 77 So.2d 13, 15 (1954).

original jurisdiction in the matter.[5] It is difficult to see how under the majority decision the appropriate civil service commission can carry out its constitutional mandate consisting in "the exclusive right to hear and decide all appeals and the legality of all removal and disciplinary cases" unless matters requiring such decision are remanded to it for decision on the merits after "questions of law" have been finally settled by the Supreme Court.[6]

The Constitution does not, of course, define in what a decision on the facts consists; it provides only that decisions of civil service commissions "shall be final on the facts." If this latter means that review shall be limited to an application of the substantial evidence rule as interpreted by the United States Supreme Court[7] then a commission's determination that there had been an "expression in writing" of the dismissal would probably not be disturbed on review since the facts in evidence were such that either the commission's inference or the contrary inference could be drawn by reasonable men.[8] To support the full substitution of judgment which took place here, reliance would seem to have to be on the notion that a finding as to "expression in writing" is a jurisdictional or constitutional fact finding not subject to the limitations of the substantial evidence rule.[9] Unless resort is had to some such doctrine, a commission finding as to whether the dismissal was or was not "with cause," had it been made, would also stand as final, if it met the substantial evidence rule. However obvious the answer may be as to such finding, the appropriate commission would seem entitled to make it rather than the court.[10]

Rather ironically, on the very day the *Young* decision was handed down and rehearing denied, the decision in *Konen v. New Orleans Police Department*[11] was also made. In that case

5. *Id.* at 720, 77 So.2d at 16.

6. LA. CONST. art. XIV, § 15(O)(1) provides: "There is vested in the State Civil Service Commission . . . the exclusive right to hear and decide all appeals and the legality of all removal and disciplinary cases. The decision of the appropriate Civil Service Commission shall be final on the facts, but an appeal shall be granted to the Supreme Court of Louisiana on any question of law. . . ."

7. See for example National Labor Relations Board v. Nevada Consol. Copper Corp., 316 U.S. 105 (1942).

8. For a discussion of the rule as it has developed in the federal cases, see Comment, 12 LOUISIANA LAW REVIEW 290, 294 (1952).

9. Estep v. United States, 327 U.S. 114 (1946); Crowell v. Benson, 285 U.S. 22 (1932).

10. 226 La. 708, 720, 77 So.2d 13, 17 (1954).

11. 226 La. 739, 77 So.2d 24 (1954).

the court refused to "interfere with the bona fide judgment of the Commission" in making a finding that an arrest by a dismissed officer was made for unworthy motives, noting in that connection that "the right of appeal to [the Supreme Court] is restricted to questions of law alone but is not for that reason unconstitutional where the prescribed procedure has been followed."[12] The court quoted approvingly from *Corpus Juris Secundum* that "where the decision is based on substantial evidence, the court may not consider the weight or sufficiency of the evidence."[13]

In *Day v. Department of Institutions*[14] the constitutional provision requiring a notification expressed in writing of the cause for which a permanent civil service employee was being "demoted, dismissed, or discriminated against"[15] was applied also to a situation where the question to be determined was whether there had been a voluntary resignation or a dismissal. As the court phrased it: "In order to make effective the removal of the subject employee from the payroll, the fact of the acceptance of her alleged oral resignation and of her removal from the payroll should have been made known by a statement in writing to her and to the Director in advance of such action."[16]

In practical effect, this means that in those instances where a department has accepted an oral resignation without written acknowledgment, the employee may thereafter, despite the lapse of the thirty-day period within which demands for hearings must normally be made,[17] still demand a hearing, since the event from which the thirty-day period begins to run has not occurred. The imposed requirement of written notice of acceptance of an oral resignation has the practical advantage of remedying this deficiency by supplying a clear starting date for any period of limitations imposed by the Commission on appeals on the question of an alleged voluntary resignation being in fact a dismissal for cause. This is one of the incidental advantages of the notice required by the Constitution in the case of an admitted dismissal for cause in addition to its main function of giving an employee

12. *Id.* at 748, 77 So.2d at 27.
13. *Id.* at 750, 77 So.2d at 28.
14. 81 So.2d 826 (La. 1955).
15. LA. CONST. art. XIV, § 15(N)(1), quoted note 2 *supra;* Boucher v. Division of Employment Security, 226 La. 227, 75 So.2d 343 (1954).
16. 81 So.2d 826, 828 (La. 1955).
17. LOUISIANA CIVIL SERVICE RULES 48, Rule 13.2 (1954).

a statement of the reasons for his dismissal in the event he wishes to contest the action. The constitutional provision would not seem of necessity to require this extension, however, since it speaks only to the dismissal for cause; it would hardly seem that "cause" would be set out in a letter acknowledging a resignation, ostensibly voluntary.[18]

A concurring member of the court noted that on the remand to the Commission as ordered by the court, only if the Commission should find that the employee did not voluntarily resign should the issue of removal without an expression in writing of the cause be brought into question.[19] In the event of such a finding a statement of the reasons for the dismissal would then be mandatory on the employing agency and further proceedings before the Commission would be directed to the validity of such reasons. While instances presumably will not be numerous where the voluntariness of an oral resignation will be drawn into question, in such instances as do occur assurance of consideration by the Commission before the facts have grown cold will now entail prompt written acknowledgment of the resignation by the employing agency.

BOARD OF PHARMACY

In *Louisiana Board of Pharmacy v. Smith*,[20] the court adopted the Board's interpretation of its governing statute[21] to the effect that the Board was without discretion to consider an application for registration on a reciprocity basis until evidence was presented that the applicant was a graduate of an accredited school recognized by the Board.[22] The applicant in the instant case was in fact a graduate of a non-accredited correspondence school of pharmacy, and had been licensed to practice pharmacy in Massachusetts. The court agreed that only if the applicant's school was accredited was there then discretion in the Board to recognize it under the act in effect in 1942. The decree of the trial court, enjoining the applicant from operating a pharmacy except with a registered pharmacist on duty, was made final.[23]

18. LA. CONST. art. XIV, § 15(N)(1), quoted note 2 *supra*.
19. 81 So.2d 826, 829 (La. 1955).
20. 226 La. 537, 76 So.2d 722 (1954).
21. La. Acts 1888, No. 66, § 2, p. 74, as amended; LA. R.S. 37:1179 (1950).
22. 226 La. 537, 547, 76 So.2d 722, 726 (1954).
23. *Id.* at 551, 76 So.2d at 726.