

FRANCISCO C. TOBIAS, PETITIONER, VS. HON. CASTRENSE C. VELOSO, JUDGE, CFI OF ILOILO, BR. III & TOMAS C. LUJAN, RESPONDENTS.

G.R. No. L-40224. September 23, 1980

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/03c54cfb1a27/>

MELENCIO-HERRERA, J.:

In this Petition for Review by Certiorari, petitioner, Mayor Francisco C. Tobias, seeks a reversal of the judgment of respondent Judge Castrense C. Veloso of the Court of First Instance of Iloilo, Branch III, in Civil Case No. 9706 entitled "Tomas C. Lujan vs. Mayor Francisco C. Tobias," a Mandamus proceeding, wherein respondent Judge ruled:

"x x x

There is no question that petitioner (respondent Tomas Lujan herein) has a clear legal right to his back salaries during the period of his suspension and respondent's (petitioner Mayor herein) obligation to approve and/or sign petitioner's voucher is properly enforceable by means of the peremptory writ of mandamus.

"x x x x x

"WHEREFORE, the writ of mandamus prayed for is granted, with costs against respondent. The respondent is hereby ordered to pay petitioner P2,000.00 as attorney's fees.

"Respondent's counterclaim is dismissed for lack of evidence.

"x x x x x."

We shall now delve into the facts.

Private respondent, Tomas C. Lujan, was appointed Chief of Police of Cabatuan, Iloilo, on December 1, 1971. On October 19, 1972, petitioner Mayor charged him with Bribery and Corrupt Practices (Administrative Case No. 2890, or, the Bribery Case, for short) before the National Police Commission (NAPOLCOM) for having allegedly demanded P1,370.00 for the extrajudicial settlement of a criminal case for Robbery in Band pending before the Municipal Court of Cabatuan (Crim. Case No. 974) while respondent was still Acting Chief of Police of said municipality.

On a date that does not appear of record, the Mayor also charged respondent before NAPOLCOM with Grave Misconduct and Serious Irregularities for the loss through theft on November 27, 1971 of the service pistol issued to him by the municipality (Administrative Case No. 2997).

As a consequence of those charges, respondent was suspended from office by the NAPOLCOM Chairman effective on December 20, 1972.

On August 9, 1973, in the Bribery Case, the NAPOLCOM ruled that although respondent was not liable for

Bribery and Corrupt Practices since his acceptance of the amount was for delivery to the offended party, such an act was improper, and held:

"WHEREFORE, conformably with the foregoing, respondent Tomas C. Lujan is hereby reprimanded and warned that repetition of the same act would invite drastic disciplinary action. The Municipal Mayor of Cabatuan, Iloilo, is hereby authorized to administer the reprimand."

In the administrative case for Grave Misconduct, respondent was exonerated by NAPOLCOM on March 9, 1973.

On October 2, 1973, NAPOLCOM lifted respondent's suspension.

On February 11, 1974, the Mayor administered the reprimand in Executive Order No. 25, Series of 1974, approved by the Provincial Board on February 27, 1974.

Upon reporting for duty on November 13, 1973, respondent submitted to the Mayor vouchers for the payment of his back salaries in the sum of P2,984.42 covering the period of his suspension from December 21, 1972 to November 12, 1973. The Mayor endorsed the same to the Provincial Auditor of Iloilo for pre-audit in a 1st Indorsement dated December 21, 1973. In a 2nd Indorsement dated January 10, 1974, the Provincial Auditor gave the opinion that respondent's salary during the period of suspension could be claimed by him upon the authority of the Municipal Council.[1] Petitioner Mayor then transmitted the papers to the Municipal Treasurer.[2] The latter, in his letter dated February 4, 1974, requested for authority from the Municipal Council to pay the back salaries of respondent.[3] Acting upon said request, the Municipal Council passed Resolution No. 160 in its regular session on February 6, 1974, authorizing the Municipal Treasurer to pay respondent his back salaries but deducting therefrom the amount of P1,000.00 as a deposit for the lost service pistol, plus a fine of P40.00 under Executive Order No. 186, Series of 1939.[4] Said Resolution, however, was not ultimately signed because of the intended veto by petitioner Mayor communicated in writing to the Council on February 11, 1974.[5]

In the meantime, the Mayor addressed a formal inquiry to the NAPOLCOM Chairman anent the entitlement of respondent to his back salaries during the period of his suspension in view of the reprimand imposed on him.[6] On February 11, 1974, he also submitted a memorandum to the Municipal Council signifying his intention to veto Resolution No. 160 as he was still waiting for the opinion of the NAPOLCOM Chairman on his official query.[7]

On February 11, 1974, respondent reiterated his request for the approval of his voucher as the authority of the Municipal Council had already been given.[8] He followed this up with another letter dated February 14, 1974, inquiring about the action taken on his request,[9] attaching thereto a certification by the Municipal Treasurer as to the availability of funds.[10] No action was taken by petitioner.

On March 25, 1974, respondent filed a Petition for Mandamus and Damages with Preliminary Mandatory Injunction against petitioner in the Court of First Instance of Iloilo to compel the latter to approve the voucher covering the payment of respondent's back salaries, with a claim for moral and exemplary damages. During the pendency of the suit, petitioner reiterated his query to the NAPOLCOM Chairman.[11]

The Mayor traversed the Petition by contending that payment of back salaries to respondent was of doubtful legality under the Police Act since respondent was not exonerated but was reprimanded; that Municipal Council Resolution No. 160 (or No. 14) was not duly approved by the Council because of an impending veto by the Mayor, as shown by a Certification of the Municipal Secretary dated April 22, 1974; and that the reason why he had failed to act on respondent's request was because he was still awaiting the official reply to his query dated February 5, 1974 from NAPOLCOM in the best interest of the Municipality and because public funds were involved.[12] By way of counterclaim, the Mayor prayed that respondent be ordered to pay the current market value of his lost service pistol plus damages in the total amount of P2,000.00 and the administrative fine of

P40.00, pursuant to the 2nd Indorsement dated February 21, 1973 of the Auditor General.[13]

On July 31, 1974, the trial Court rendered judgment in favor of respondent Chief of Police as set forth at the outset.

Petitioner moved for reconsideration as he had already received the reply of Deputy Executive Commissioner Vicente G. Carag dated July 23, 1974 to the effect that since respondent was not exonerated in the Bribery Case but "was ordered reprimanded (guilty) x x x x it is evident that he is not entitled to back salaries." [14] Reconsideration was denied by the trial Court on the ground that the opinion of the said official cannot prevail over Rule XVIII, Section 4(e) of the Civil Service Rules, providing that "an admonition or a warning whether given by the Commissioner or the head of Department or agency shall not be considered a penalty."

Petitioner has interposed this appeal directly to this forum with the following posers:

- Will the Civil Service Act apply to police Service or is it R.A. 4864 (Police Act of 1966 as amended)?
- Is reprimand a penalty or an exoneration?
- Will Mandamus lie against petitioner who acted in good faith to protect the interest of the Municipality of Cabatuan?
- Is the award of attorney's fees against petitioner tenable?
- Is the dismissal of the counterclaim for lack of evidence proper in view of the Decision of the Auditor General and the certification of the amount of the Municipal Treasurer of Cabatuan?

Although we denied the petition on August 22, 1975 for lack of merit, upon motion for reconsideration of petitioner, we resolved to give due course.

The Petition is meritorious.

The Police Act of 1966 (Republic Act No. 4864 created the Police Commission and was designed to amend and revise the laws relative to the local police system. Since respondent is a Chief of Police, he undoubtedly comes within the purview of that Act.

Section 16 thereof specifically provides in its last sentence that

"Suspension of Members of the Police Force." -

"x x x x

"The respondent shall be entitled to his salary for the period of suspension upon exoneration.

"x x x x" (italics supplied).

Section 4, Rule X, of the Police Manual reiterates the same proviso:

"Sec. 4. Payment of Salary during the Period of Preventive Suspension. - When a member of a city or municipal police force is exonerated by the Police Commission, the respondent member shall be entitled to receive the entire salary he failed to receive during the period of his preventive suspension" (italics ours).

Section 7 of Presidential Decree No. 12-A promulgated on October 4, 1972 similarly provides:

"Members of the Police force who have been preventively suspended, shall, upon exoneration, be entitled to immediate reinstatement and payment of the entire salary they failed to receive during the period of suspension" (italics supplied).

Respondent was not exonerated by NAPOLCOM but was reprimanded. Can a reprimand then be equated with exoneration? Or, with "warning" or "admonition", which under the former Revised Civil Service Rules, is not to be considered a penalty?

A negative answer is called for.

A warning, in ordinary parlance, has been defined as "an act or fact of putting one on his guard against an impending danger, evil consequences or penalties," while an admonition, "refers to a gentle or friendly reproof, a mild rebuke, warning or reminder, counselling, on a fault, error or oversight, an expression of authoritative advice or warning".[15] They are not considered as penalties. A reprimand, on the other hand, is of a more severe nature, and has been defined as a public and formal censure or severe reproof, administered to a person in fault by his superior officer or a body to which he belongs.[16] It is more than just a warning or an admonition.

A reprimand is an administrative penalty although it may be a slight form of penalty. Section 1, Rule VIII of the Police Manual on the subject of Discipline includes reprimand as a "disciplinary punishment." It is the last in the scale of graduated penalties that may be imposed in administrative cases listed in Memorandum Circular No. 8, series of 1970, paragraph II, of the Civil Service Commission under the subject of "Guidelines in the Application of Penalties in Administrative Cases and Other Matters Relative Thereto." It is a penalty that may be imposed for a light offense.[17] The same Circular further provides that "the penalty of reprimand must be in writing",[18] and that "the penalty of reprimand shall not carry with it any administrative liability".[19] The Civil Service Decree (PD No. 807) promulgated on October 6, 1975, also lists reprimand as one of the imposable penalties.[20] In fact, reprimand as provided for in said Circular, has been imposed as a penalty by this Court in Administrative Case No. P-167, *Mendoza vs. Eclavea*. [21]

The conclusion is inevitable then that since respondent was reprimanded, and reprimand being a penalty, he is not entitled to his back salaries for the period during which he was under suspension. A suspended member of the Police force is so entitled only upon exoneration or acquittal.[22]

Respondent's argument that he was reprimanded not for the offense of Bribery and Corrupt Practices but merely for improper conduct in the settlement of a criminal case, hence, he was cleared of any graft or corrupt practices, is puerile. The act for which he was reprimanded was the same act which gave rise to the charge of Bribery. While the evidence was insufficient to convict him for the latter offense, his act was nonetheless considered improper and called for the penalty of reprimand.

Consequently, petitioner Mayor cannot be compelled by the extraordinary Writ of Mandamus to pay respondent Chief of Police his back salaries, and respondent Judge must be held to have committed grave abuse of discretion in issuing said Writ and in ordering petitioner to pay attorney's fees. As the chief executive officer of the municipal government, he showed prudence and discretion in withholding the payment of respondent's back salaries until higher administrative authorities had ruled on its legality.

We come now to the counterclaim for the value of respondent's lost service pistol plus damages in the amount of P2,000.00. It is true that in Administrative Case No. 2997 for Grave Misconduct and Serious Irregularities for the loss of respondent's service pistol owned by the Municipality of Cabatuan, respondent was exonerated on March 9, 1973. However, in respondent's request for relief from property accountability, the Auditor General in his 2nd Indorsement of February 21, 1973,[23] reiterated on July 25, 1974,[24] found that the loss of respondent's firearm occurred through the latter's fault or negligence so that his request for relief from responsibility for the loss was denied and he was required to pay the value of the pistol at its current price plus the administrative fine of P40.00. The original indorsement was, in turn, indorsed by the Iloilo Provincial Auditor to the Municipal Treasurer of Cabatuan.[25] Apparently, respondent had failed to pay the same, hence, petitioner's counterclaim in the case

below demanding payment. A Certification from the Municipal Treasurer, dated September 16, 1974, indicated that according to personal canvass made by him, the current market price of Pistol Colt Cal. 38 is P2,000.00.[26]

There is no ambiguity in the foregoing documents. They belie the trial Court's findings that the counterclaim had to be dismissed for lack of evidence. Clearly, therefore, respondent should be made to pay the amount of P2,000.00 for the service pistol which he had lost plus P40.00 as administrative fine.

WHEREFORE, the judgment of the trial Court granting the Writ of Mandamus, awarding attorney's fees of P2,000.00 in favor of respondent Tomas C. Lujan is hereby reversed.

On the counterclaim, respondent Tomas C. Lujan shall pay the Municipality of Cabatuan, Iloilo, the sum of P2,000.00, plus P40.00 as administrative fine.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] pp. 53-54, Rollo.

[2] Annex E, p. 15, CFI Record.

[3] Annex F, p. 16, Ibid.

[4] Annex G, p. 17, Ibid.

[5] p. 52, Rollo.

[6] pp. 33-34, CFI Record.

[7] p. 52, Rollo.

[8] Annex H, p. 18, CFI Record.

[9] Annex J, p. 20, Ibid.

[10] Annex K, p. 21, Ibid.

[11] p. 50, Rollo.

[12] Annex "2", Answer, pp. 33-34, CFI Record.

[13] Annex "4", p. 36, Ibid.

[14] p. 67, CFI Record.

[15] p. 207, The Civil Service Employees and the Law by Gonzalo S. Robles, 1968 ed.

[16] Black's Law Dictionary.

[17] parag. IV (A) (1), Ibid.

[18] Other Matters I(7), Ibid.

[19] Other Matters, III(7), Ibid.

[20] Sec. 36(d), IX, on Discipline.

[21] 65 SCRA 175 (1975).

[22] Sec. 16, RA No. 4864; Noromor vs. Municipality of Oras, Samar, 7 SCRA 405 (1963).

[23] p. 36, CFI Record.

[24] p. 68, Ibid.

[25] p. 37, Ibid.

[26] p. 72, Ibid.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.