

ROMULO A. SALES, PETITIONER, VS. ISMAEL MATHAY, SR., AS AUDITOR GENERAL, EPIREY PANGRAMUYEN, AS COMMISSIONER OF CIVIL SERVICE, DAVID CONSUNJI, AS ACTING SECRETARY OF DEPARTMENT...*G.R. No. L-39557. May 03, 1984*

Ponente: FERNANDO, C.J.

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This proceeding for mandamus against respondent Auditor General Ismael Mathay, Sr., the then Auditor General,[1] now retired, arose from the denial of a claim for back salaries of petitioner Romulo Sales, appointed Clerk II in the Bureau of Posts, previously designated Acting Postmaster of Pinamalayan, Oriental Mindoro, who was found short of P992.46 in his account on March 21, 1963 and of P1,000.00 on May 24, 1963. The amount in question covers the period from February 9, 1966 to August 15, 1971, during which time he was under suspension. It was on the latter date that he received a resolution of the then Commissioner of Civil Service reducing what was originally the penalty of dismissal to six months suspension, finding petitioner guilty at most of gross neglect of duty.

The first letter of respondent Mathay, Sr., dated October 15, 1973, denying the claim, follows: "In reply to your letter, dated March 6, 1973, requesting payment of back salaries during the period that you were allegedly prevented to work as Postal Clerk II in the Pinamalayan Post Office, Oriental Mindoro, for the period from February 9, 1966 to August 15, 1971, please find enclosed a copy of the 4th Indorsement, dated September 18, 1973, of the Acting Undersecretary of Public Works, which is self-explanatory. Accordingly, this Office is not inclined to allow payment of your salary corresponding to the period you were out of the service." [2] The second letter from the same respondent reads thus: "In connection with your letter of October 20, 1973 followed up by your letters of October 22 and 31, 1973, we wish to inform that after considering the fact and circumstances of your case in conjunction with your arguments and the decisions of the Supreme Court you cited, we are of the opinion that your claim for back salaries from February 9, 1966 to August 15, 1971, may not be authorized for the reason that you have not shown that your suspension for the period covered by your claim is unjustified; that you have not rendered service for said period; and that you were not exonerated of the administrative charges against you. Furthermore, the Commissioner of Civil Service in his decision of July 20, 1971, did not expressly order the payment of your back salary. Indeed, in his latest decision (1st Indorsement, dated January 9, 1973, copy attached), the Commissioner of Civil Service denied your claim for payment of back salaries. In view hereof, this Office finds no legal basis for allowing your claim, and, therefore, reiterates its decision embodied in a letter, dated October 15, 1973, to you." [3] Hence this petition.

Respondents were required to comment. Solicitor General Estelito P. Mendoza filed the Comment, later considered as the answer, as petition was given due course. There was no dispute as to the above facts. After the filing of the memoranda by both parties, the case was deemed submitted for decision.

This petition for mandamus to review the actuation of respondent Mathay, Sr. lacks merit.

1. On the above facts, the question posed is whether petitioner should be entitled to the payment of his back salary from February 9, 1966 to August 15, 1971. The answer must be in the negative. That is to conform to the ruling in the case of *Villamor v. Lacson*.^[4] The pertinent excerpt, in the ponencia of Justice Paredes, follows: "It will be noted also that the modified decision did not exonerate the petitioners. And if we take into account the fact that they did not work during the period for which they are now claiming salaries, there can be no legal or equitable basis to order the payment of their salaries. The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As you work, so shall you earned. And even if we consider the punishment as suspension, before a public official or employee is entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee was innocent of the charges proffered against him (*F. B. Reyes vs. J. Hernandez*, 71 Phil., 397), which is not the case in the instant proceedings."^[5]

2. The next paragraph of the above ponencia of Justice Paredes is equally conclusive on the matter of why the decision reached by respondent Mathay, Sr. cannot be reversed. Thus: "The action at bar is one of mandamus. For mandamus to lie, the legal right of the petitioner must be well defined, clear and certain, otherwise the petition for the issuance of such writ, will be denied (*III Moran's Comments on the Rules of Court*, 1963 Ed. 172). Petitioners have not shown that they are entitled to the salaries, as a matter of right."^[6]

WHEREFORE, the petition is dismissed for lack of merit.

Makasiar, Aquino, Guerrero, and Abad Santos, JJ., concur.

Concepcion, Jr., De Castro, and Escolin, JJ., did not take part.

[1] Joined with him as respondents were the then Commissioner of Civil Service Epi Rev Pangra-muyen, the then Acting Secretary of Department of Public Works and Communications David Consunji and the then Postmaster General Felizardo Tanabe.

[2] Letter of respondent Mathay, Sr., dated October 15, 1973.

[3] Letter of respondent Mathay, Sr., dated May 6, 1974.

[4] 120 Phil. 1213 (1964).

[5] *Ibid*, 1219. Cf. *Austria v. Auditor General*, L-21918, January 24, 1967, 19 SCRA 79; *Avila v. Gimenez*, L-24615, February 28, 1969, 27 SCRA 321; *Yarcia v. City of Baguio*, L-27562, May 29, 1970, 33 SCRA 419.

[6] *Ibid*.

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