

LEONARDO AVILA, PETITIONER-APPELLANT, VS. PEDRO M. GIMENEZ, AS AUDITOR GENERAL, ABELARDO SUBIDO, AS COMMISSIONER OF CIVIL SERVICE, THE PROVINCE OF BUKIDNON, LUIS R. LLAUDER, AS ...

G.R. No. L-24615. February 28, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

Under the Civil Service Law,[1] a situation confronting us would not have occurred as it is therein expressly provided that when an administrative case against an officer and employee "under preventive suspension is not finally decided by the Com-missioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, [he] shall be rein-stated in the service." [2] That was not so before.

In the case before us, petitioner was preventively suspended by the Auditor General from his position as Provincial Auditor of Bukidnon on January 13, 1951 and was riot recalled to the service until August 15, 1963, when he was extended an appointment as Acting Provincial Auditor of the same province, a period of more than twelve and a half years. He then filed an action for the recovery of his salaries from the time of his suspension on January 13, 1959. A motion to dismiss was filed by the Provincial Fiscal and the Solicitor General on behalf of respondents included among whom were the then Auditor General, Pedro M. Gimenez, and the Commissioner of Civil Service, Abelardo Subido. The lower court, presided by the Hon. Abundio Z. Arrieta, found the motion meritorious and dismissed the petition. Hence this appeal by petitioner. We affirm the order of dismissal of the lower court.

What were the controlling facts? According to the well-reasoned order of the lower court of November 9, 1964: "Assuming the allegations of the petition to be true, it appears that the peti-tioner was preventively suspended by the Auditor General from his position as Provincial Auditor of Bukidnon on January 13, 1951 because of the filing before the Court of First Instance of the province of Criminal Case No. 182 for Malversation of Public Funds against him and the then Provincial Treasurer of the province. An administrative case was also commenced by the Auditor General against the petitioner in which a decision was rendered by the Com-missioner of Civil Service on February 12, 1953 finding him guilty of the charge so that he was fined one (1) month's pay and reprimanded. He did not appeal from said decision of the Commissioner of Civil Service but made some efforts to obtain his reinstatement. The Auditor General, nevertheless, refused because of the pendency of the criminal case aforestated. Eventually, the petitioner was convicted by the Court of First Instance of Bukidnon and the Auditor General, on November 25, 1958 recommended to the Commissioner of Civil Service his permanent separation from the service effective as of the date of his suspension on January 13, 1951." [3]

Then, on March 13, 1959, petitioner wrote the Civil Service Commission requesting that no action be taken on the recommen-dation of the Auditor General pending his appeal to the Court of Appeals of the decision in the criminal case. The Civil Service Commission however turned a deaf ear to such a plea approving such

recommendation and separating him from the service as of January 13, 1959. This order in turn was appealed to the Civil Service Board of Appeals.[4] Subsequently, his conviction was set aside by the Court of Appeals which ordered a new trial. Then, on August 5, 1960, petitioner again sought his reinstatement from the Auditor General, in view of the aforesaid decision of the Court of Appeals.[5]

The fact of reinstatement was then noted in the appealed decision thus: "On October 22, 1962, the Civil Service Commission informed the Auditor General that it would interpose no objection to the reinstatement of the petitioner, but nothing was done about it. On February 6, 1963, however, the Commissioner of Civil Service again called the attention of the Auditor General, and the latter, extended him an appointment as Acting Provincial Auditor for Bukidnon on August 15, 1963, which was forwarded to the Commissioner of Civil Service on September 6, 1963. He accepted said appointment and is actually serving in that capacity at present."[6]

The first ground of the dismissal, as noted in the first assignment of error for petitioner in this appeal, is that the lower court could not have validly issued such an order on the ground of the delay in the claim for salary during the period of his preventive suspension. The second alleged error would likewise dispute the other ground for the order to dismiss, namely, that the emoluments to a public office would go to the person who rendered the service unless the contrary is provided.[7] It would thus appear that the lower court was of the belief that a right to recover salary after reinstatement exists, which could not be enforced, there being in this particular case an insuperable obstacle to its being respected, due to the long delay that elapsed before a claim was made.[8]

This view of the lower court is subjected to a challenge, as set forth above in the first error assigned. If there were no such right, however, no inquiry need be made on whether or not such delay sufficed to constitute a bar to the success of the petition in this case. Hence the crucial question is the existence of a right to back salary assuming that the acceptance of an appointment as Acting Provincial Auditor twelve and a half years later did constitute reinstatement?

The answer, so petitioner believes, is supplied by the applicable statutory provision found in the Revised Administrative Code. It reads thus: "When the Chief of a Bureau or Office suspends a subordinate officer or employee from duty, the person suspended shall not receive pay during suspension unless the Department Head shall so order; but upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid, but without prejudice to the application of the disciplinary provisions of section six hundred and ninety-five hereof."[9]

Petitioner would further invoke at least four decisions, decided by us, which for him would be decisive of his right to compensation during the period of his preventive suspension. They are: *Batungbakal v. National Development Co.*,[10] *National Rice and Corn Corp. v. Naric Workers' Union*,[11] *Tabora V. Montelibano*[12] and *Tan v. Gimenez*. [13] The *Batungbakal* opinion was particularly stressed by petitioner. It is understandable why. Thus: "Having proven that he (the plaintiff) had been suspended and dismissed without cause, contrary to the express provision of the Constitution, his rein-statement becomes a plain ministerial duty of the Auditor General, a duty whose performance may be controlled and en-joined by mandamus. There is no room for discretion. The Auditor General is not being directed to perform an act which he may or may not execute according to his discretion. He is being asked and enjoined to redress a grievance, to right a wrong done. And the payment of the back salary is merely incidental to and follows reinstatement, this, aside from the parallel and analogy which may be found in section 260, para-graph 1, Revised Administrative Code which provides for the payment of back salary upon reinstatement." [14] The pronouncement therein made by us finds confirmation in the two subsequent cases abovementioned, *National Rice and Corn Corp. V. Naric Workers' Union* and *Tabora v. Montelibano*.

Then came *Tan v. Gimenez*, [15] which apparently would further strengthen petitioner's stand. For we there

explicitly announced: "To deny [petitioner] the right to collect his back salaries during such period would be tantamount to punishing him after his exoneration from the charge which caused his dismissal from the service."

This apparently well-entrenched position of petitioner is illusory however. The decision in *Gonzales v. Hernandez*,^[16] cited by respondents is controlling. The cases cited by petitioner would be applicable if he were exonerated of the charge lodged against him. Unfortunately, however, as noted in the appealed order of dismissal, cited in his own brief and noted by us earlier, an administrative case was commenced against him by the Auditor General for malversation of public funds with a decision being rendered by the Commissioner of Civil Service on February 12, 1953, finding him guilty of the charge, the penalty imposed being a fine of one month's pay and a reprimand, a decision from which he did not bother to appeal.^[17]

Such a conviction is fatal to his claim, as the above cited *Gonzalez v. Hernandez* will explain. "The law which allows payment of back salaries in cases like this is Section 260 of the Revised Administrative Code. A perusal of the decisions of this Court in cases similar to the case at bar, however, show that back salaries are ordered paid to an officer or an employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal. In the case at bar, plaintiff was not completely exonerated, because although the decision of the Commissioner of Civil Service was modified and the plaintiff was allowed to be reinstated, the decision ordered him to forfeit two months pay and not to be given back salaries."

That is all then that this appeal presents. It could not in any wise, therefore, lay any valid claim to be considered favorably. There could have been some plausibility for petitioner's invocation of the appropriate Administrative Code provision which would, on its face, lend color to his claim for compensation. Once the tyranny of literalness is rejected, however, to paraphrase Frankfurter, and the decisive feature of the *Gonzalez* decision, which would thus give a rational content to the language of the statutory provision, recognized, petitioner's case falls apart completely.

WHEREFORE, the order of dismissal of the lower court dated November 9, 1964, is affirmed. With costs against petitioner.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Capistrano, Teehankee, and Barredo, JJ., concur.

Sanchez, J., no part.

Castro, J., reserves his vote.

[1] Republic Act No. 2260 (1959).

[2] *Ibid*, Section 35.

[3] Order of the lower court, Annex C, Brief for Petitioner-Appellant, p. V.

[4] *Ibid*, pp. V-VI.

[5] *Ibid*, p. VI.

[6] *Ibid*, pp. VI-VII.

[7] On this point, the lower court relied on *Rodriguez v. Tan*, 91 Phil. 724 (1952); *Mesias v. Jover*, 97 Phil. 899 (1955); *Unabia v. City Mayor*, 99 Phil. 253 (1956).

[8] Order of the lower court, Annex C, Brief for Petitioner-Appellant, p. VIII.

[9] Section 260, Revised Administrative Code. The reference to Section 695 of the Administrative Code is not

material; it speaks of the administrative discipline of subordinate officers and employees, a matter now governed by the present Civil Service Law, which, it is worth noting, now speaks of the right of an officer or an employee exonerated to be restored to his position "with full pay for the period of [the preventive] suspension."

[10] 93 Phil. 182 (1953).

[11] 98 Phil. 563 (1956).

[12] 98 Phil. 800 (1956).

[13] G.R. No. L-12525, February 19, 1960.

[14] *Batungbakal v. National Development Co.*, 93 Phil. 182, 193-194.

[15] G.R. No. L-42525, February 19, 1960.

[16] G.R. No. L-15482, May 30, 1961.

[17] Order of Dismissal, Brief for Petitioner-Appellant, Annex C.

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