

EGMIDIO T. PASCUA, PETITIONER AND APPELLANT, VS. HON. PEDRO TUASON, ETC., RESPONDENT AND APPELLANT.

G.R. No. L-13046. May 20, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Both parties to this case have appealed from the decision of the Manila court of first instance, in a mandamus proceeding, ordering petitioner's reinstatement to his former Government position[1] with back salaries, unless he has been suspended or should be suspended by the respondent Secretary of Justice by virtue of the charges newly filed against him.

Such decision was rendered upon a stipulation of facts, the pertinent portions of which read as follows:

"2. On December 1, 1937, petitioner was appointed to the Division of Investigation (now National Bureau of Investigation) of the Department of Justice and rendered active service since that date, so much so that on January 6, 1949, he was appointed District-Agent-at-large at a salary of P4,800.00 per annum;

* * * * *

4. Sometime on May 14, 1951, in connection with (his) assignment in the PRISCO office at Cebu City, petitioner * * was accused in Criminal Case No. V-2971 of the Court of First Instance of Cebu, of the crime of falsification of public documents, and on May 18, 1957, the then Secretary of Justice issued the following order of suspension against petitioner:

'In view of the information filed against you, and upon the recommendation of the Assistant Director of the National Bureau of Investigation, you are hereby suspended from office, effective upon receipt hereof, and pending the termination of the case filed against you.'

5. While under such suspension, another criminal case No. V-2999 of the Court of First Instance of Cebu was filed against petitioner jointly with Isidro Kintanar and several others, for "grave coercion";

6. In both cases, petitioner was convicted by the Court of First Instance of Cebu but in both cases also, he was acquitted by the Court of Appeals; the acquittal in the Criminal Case for falsification of public documents became final on April 8, 1953, and his acquittal in the criminal case for grave coercion on October 8, 1954;

7. In view of these acquittals, on October 18, 1954, petitioner re requested the respondent to reinstate him and to order the payment of his back salaries, but respondent has refused and still refuses to do so for the following reasons. On September 6, 1954, before his acquittal of the charge of grave coercion by the Court of Appeals, petitioner was charged administratively with acts unbecoming of a district agent, because during his suspension from office mentioned in the preceding paragraph 4 hereof, he managed a corporation called the Central Information and Advisory Service, Inc., which is engaged in gathering information of all kinds and supplying the same to interested parties for a fee or price. Again, on October 15, 1955, the Director of the National Bureau of Investigation filed other administrative charges against the petitioner for oppression, dishonesty and negligence

based upon the facts subject of the criminal cases referred to in the preceding paragraphs 4 and 5 hereof. All said administrative charges are still being heard."

The judge opined that after his acquittal in the criminal cases for falsification and coercion, the suspended officer became entitled to reinstatement; but as there were other charges for which he might have been or could be suspended, said judge added as a precautionary measure, the proviso about eventual suspension by the Department Head.

Against this condition or proviso the petitioner took this appeal, contending it might imply respondent's power to suspend him now—i. e. keep him out—by virtue of the new charges, without first reinstating him and paying him his back salaries. We think it does imply such power; and the question remains whether the judgment, for that reason, becomes legally objectionable. In view of the administrative charges, the Secretary had the prerogative of suspension, or, more correctly, of continuing the suspension previously decreed. Having failed to perceive the second alternative, and concluding that the suspension on account of the criminal charges should be ended, the court required his reinstatement, with the saving clause, however, that would avoid encroachment upon the Department's power to take action on account of the two administrative charges, the seriousness of which may be here outlined. According to the first, about gathering information, Pascua imparted confidential matters in the files of the Bureau to private parties, for a price[2]; and the second contains the following:

I. OPPRESSION

"In that Atty. Pascua together with his armed companions, on 9 March 1951, at the Lahug Airport Cebu prevented and cause to be detained, without warrant of arrest and through force, threat and intimidation, four PRISCO agents from boarding a PAL plane bound for Manila (See Annex G). It appears that these four PRISCO agents had in their possession papers linking Atty. Pascua with the Cebu Flour Scandal. On the said date, these four PRISCO agents were bound for Manila to report to their home office. Evidently to suppress evidence against him and under color of law, he wilfully and unlawfully prevented the flight of said PRISCO agents thus subjecting them to greater hardships than are necessary for the proper enforcement of the law."

II. DISHONESTY

"a. In that Atty. Pascua, while a District Agent of Cebu and at the same time detailed with the PRISCO office thereat in 1951 to assist in the screening of applications for flour allocation, did then and there, wilfully and contrary to law, facilitated or caused to be facilitated the approval of an application for flour allocation he knew or had knowledge to be faked by stating to the PRISCO officials that the authority for the said flour allocation was in their NBI files when in fact and in truth there was no such authority. (Annex H. Statement of Isidro Yuson, then Auditor of the PRISCO Branch in Cebu) thus causing prejudice to the government and to the persons who were by law entitled to the allocation.

b. In that Atty. Pascua, during his incumbency as District Agent of Cebu in 1951 and while detailed with the PRISCO Office thereat, did then and there, contrary to law, collected the amount of P3.00 for every bag of flour he screened and approved. (See Annex H, Statement of Isidro Yuson, Auditor, PRISCO Branch, Cebu)."

Referring to these charges, counsel for respondent submitted these propositions to the trial judge: (a) the new charges against petitioner being quite grave, could give ground for suspension of the petitioner (if he were actually serving); (b) in the case thereof, the Secretary thought it unnecessary to order a suspension of Pascua, as he was already under suspension since May 1957; and (c) the Secretary merely declined to reinstate. Said judge, as already explained, believed the suspension of May 18, 1957 had already served its purpose, inasmuch as Pascua had been acquitted from the criminal charges; wherefore, he ordered reinstatement. However, realizing the seriousness of the new accusations, he added the proviso here in question.

The court thereby practically held that, to keep the petitioner out of the government service, it was essential for the Department Secretary to issue another order suspending him from office. We think, however, that such suspension besides being an empty formality—as Pascua is under suspension—would require an incongruous act, i. e., suspending one already under suspension. On the other hand, as the Solicitor-General observes, the Secretary's refusal to reinstate, as explained in his answer to this petition, practically amounts to a determination to suspend Pascua, should such "suspension" be still necessary at this stage of the proceedings. So, the court's determination of the issue involved herein would merely become academic,[3] since it would be within the power of the respondent to frustrate any order of reinstatement.

Now then, it appearing that there were sufficient reasons for the respondent not to call petitioner back into the Government service; and bearing in mind the courts' hesitation to intervene in the administrative practices of the executive department[4], and the principle that mandamus may only be issued to enforce a "clear and certain" legal right[5], we reach the inevitable conclusion that this special civil action may not be sustained. Hence the request for mandamus must be, and is hereby denied, with costs against petitioner. So ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.

[1] Agent, National Bureau of Investigation.

[2] As these activities occurred during the period he was under suspension petitioner says: it is illegal to deny me salary in the Government and at the same time prevent me from earning money at the job I know best. But the charge is that he abused his connection with the N. B. I. by surreptitiously getting classified matter therein and selling it to private parties.

[3] Cf. *Banco Nacional Filipino vs. Bejasa*, 62 Phil., 957.

[4] *Case vs. Board of Health*, 24 Phil., 250.

[5] *Zamora vs. Wright*, 53 Phil., 613; *Sanson vs. Barrios*, 63 Phil., 198; *Pabico vs. Jaranilla*, 60 Phil., 247.

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