

**PEDRO P. CLEMENTE, PETITIONER, VS. THE COMMISSION ON AUDIT,
REPRESENTED BY FRANCISCO S. TANTUICO JR., ACTING CHAIRMAN,
RESPONDENT.**

G.R. No. L-47793. March 20, 1984

Ponente: MAKASIAR, Actg. C.J.

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MAKASIAR, Actg. C.J.:

The question raised is whether or not petitioner is entitled to the payment of back salaries from September 19, 1975 to April 17, 1977, corresponding to the period he was separated from the government service by the President of the Philippines.

Petitioner, a certified public accountant, was an employee of the Commission on Audit, duly appointed as Deputy Auditor of the Central Bank. He had been with the Commission on Audit since November 11, 1935 where he had held various positions. His separation, together with that of several hundred government employees, was pursuant to Letter of Instruction No. 309, series of 1975 and was made effective September 19, 1975 (p. 35, rec.).

In a speech delivered on the occasion of the third anniversary of the proclamation of martial law, the President of the Philippines announced "the beginning of a sweeping, complete and exhaustive reorganization of the government" (Speech of President Marcos, 71 O.G. No. 39, Sept. 29, 1975, pp. 6322K - 6322L). One of those affected in the overhaul of government machinery was the Commission on Audit where hundreds of employees from the highest to the lowest rank were purged.

The names of all officials and employees affected by the reorganization, or by the September, 1975 purge, as it was called, including that of petitioner, were later published in the metropolitan dailies.

Petitioner appealed to the President. Per memorandum of Presidential Executive Assistant Jacobo Clave dated March 28, 1977, petitioner was informed of the President's approval of his reinstatement as Deputy Auditor of the Central Bank. Forthwith, by way of implementing the presidential order, respondent directed petitioner to report to his former office. Petitioner reported on April 18, 1977.

On November 29, 1977, petitioner filed with the Commission on Audit his claim for the payment of his back salaries during the period he was out of the service. He also sought clarification from the Office of the President regarding the effect of his reinstatement in the government service. Acting on the foregoing request for clarification, the Presidential Executive Assistant on August 30, 1977 rendered a decision, the pertinent portion of which reads:

"As a rule, the reinstatement of government employee whose dismissal has been reconsidered carries with it payment of back salaries. This however, applies only to instances where the dismissal is the result of an ordinary administrative case. Separation from the service under the 'September 1975 purge' is of a different category. The policy of this office in the latter case is to deny backwages and other benefits to employees 'purged' but subsequently reinstated, they being considered under suspension during the period they were out of the service. The employee concerned, however, may charge the period of their suspension to their leave of

absence if any there be. He may also collect such other benefits to which an employee on leave is ordinarily entitled (*Italics supplied*)" [pp. 45-46, rec.].

In his 1st Indorsement dated January 3, 1978, respondent denied petitioner's claim for back salaries strictly on the basis of the foregoing decision of the Office of the President. Respondent's decision concludes:

"Accordingly, Mr. Clemente who is considered under suspension from September 19, 1975 to April 17, 1977, the period he was out of the service, may charge such period to his leave of absence, if there be any, and collect only the money value of his leave credits corresponding to the same period, subject to the availability of funds and the usual audit" (pp. 11-12, rec.).

In sustaining an affirmative answer to the question posed for resolution, petitioner cites the provision of Section 35, Article VII of Republic Act No. 2260, otherwise known as the Civil Service Law, which reads:

"Sec. 35. Lifting of Preventive Suspension Pending Administrative Investigation. -- When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

To reinforce his allegation, petitioner cites the cases of *Abellera vs. City of Baguio, et al.* (19 SCRA 600), *Tanala vs. Legaspi* (13 SCRA 566) and *Sison vs. Pajo* (14 SCRA 160), where this Court upheld the payment of back salaries to re-instated employees corresponding to the period they were deprived of work.

As correctly observed by the Solicitor General, the above provision cited by petitioner applies only where the officer or employee concerned is placed under "preventive suspension," which is subsequently lifted when the officer or employee is finally exonerated. In the case at bar, herein petitioner is differently situated. As he has admitted, as of September 19, 1975, when he was purged, there was no pending administrative charge against him for any act or omission that warrants disciplinary action under pertinent laws and rules. His separation from the service is not considered a preventive suspension contemplated under Section 35 of the Civil Service Law. It is not the consequence of an administrative case, just as his reinstatement is not the result of an exoneration from administrative charges.

Webster, Third New International Dictionary of the English Language, gives the meaning of purge:

"A purge is an act or instance of purging; a ridding (as of a nation or party) of element or members regarded as treacherous, disloyal or suspect."

As We see it, the "September 1975 Purge" is part of the process of cleaning up the government machineries, which upon the imposition of martial law, the President had taken to task. It was noted that the martial law in our country was not merely utilized to quell rebellion, but also to introduce institutional reforms and changes in the New Society, to eliminate the very causes of discontent that drive the people to rebellion. Too well known fact is the evil that plagued government service. Graft and corruption among government employees and officers were too rampant in almost all offices. Numerous public officials, using their high positions for personal gain at the expense of the public, have not lived up to the public trust. The program of reforms of the President in the New Society by instilling discipline on the people, particularly those in the government service, and by weeding out from the service employees and officials considered notoriously undesirable were envisioned as an answer to the long felt need for restoring the confidence of the people in the government. It is in this context, therefore, that petitioner's separation cannot be categorized as preventive suspension provided in Section 35 of the Civil Service Law which orders payment of back salaries upon reinstatement. His separation on September 19, 1975 was for all intent a dismissal pursuant to the urgently needed reform movement initiated by the President, which, as a

compassionate gesture, was subsequently modified as suspension without pay -- a disciplinary penalty short of dismissal.

The President, of course, did not order the "September 1975 purge" by a snap of his fingers. As adverted to earlier, the September, 1975 purge was made pursuant to Letter of Instruction No. 309, series of 1975 which was issued under the authority of Section 9, Article XVII of the Constitution, which vests upon the incumbent President the power to remove officials and employees of the existing government. Pertinent portion of Section 9 reads:

"Sec. 9. All officials and employees in the existing Government of the Republic of the Philippines shall continue in office unless otherwise provided by law or decree by the incumbent President of the Philippines x x."

Certainly, this dissipates all doubts petitioner entertained over the legality of his separation. Said Section 9 of Article XVII qualifies during the transition Section 9, Article XII(B) of the Constitution which reads:

"Sec. 3. No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law."

At any rate, it is very significant to point out that petitioner's separation was based on the list submitted by then Acting Chairman Ismael Mathay Sr. of the Commission on Audit on August 28, 1975, or twenty-one (21) days before the purge.

The personal records of petitioner reveal that he had had an administrative case for which, although it was dismissed, petitioner was admonished by Mr. Mathay in his decision dated September 2, 1975, to wit:

"After due consideration of the findings and conclusions of the Committee created under Office Order No. 9122 dated July 24, 1974, which this Commission finds to be well taken and borne out by the record of the case, the aforementioned administrative case against you is hereby dismissed and the matter is considered closed. However, you are hereby sternly admonished to exercise more caution and prudence and to comport yourself with the highest degree of responsibility in your official actuations in order to obviate similar occurrences in the future. More specifically, you are exhorted to henceforth exercise closer and stricter supervision over your personnel assigned in the Currency Retirement Division of the Central Bank, and as much as possible to make a personal overseeing of their performance, including daily visits to their place of assignment for purposes of physical follow-up and ocular check-up of their respective tasks" (201 File).

To exonerate means "to exculpate, to relieve" (35 C.J.S., p. 227). It is "to clear from accusation or blame" (Webster, Third New International Dictionary of the English Language). The word "exonerate" "may imply complete clearance not only from immediate charge or accusation but from suspicion or attendant denigration" (Ibid.). Petitioner was not completely exonerated of the administrative charge filed against him. The admonition to petitioner contained in the decision in the administrative case no more implies than that petitioner had also been remiss in the discharge of his duties.

Being a legal act therefore on the part of the President, petitioner is not entitled to back salaries. Even the Letter of Instruction No. 647 which was issued on December 27, 1977 in connection with the "September 1977 Purge" does not authorize payment of backwages to purged but reinstated employees (Octot vs. Ibañez, et al., 111 SCRA 79, 83-84).

Another point. It is a settled rule in our jurisdiction that absent a showing that the dismissal was tainted with bad faith and in grave abuse of discretion, an employee is not entitled to backwages (Octot vs. Ibañez, supra, citing San Miguel Corp. vs. Secretary of Labor, 64 SCRA 56). The separation of some 2,000 undesirables, which include herein petitioner was impelled by the desire to have reforms in all branches of the government, including

the Commission on Audit where hundreds were involved. The President had noted "that in a great number of cases, graft and corruption in the government has been possible only with the collusion, participation, if not at the instance, of personnel of the Commission on Audit" (Speech of President Marcos, *supra*). Before the measure for reforms was implemented, the government undertook a performance audit of all government officials and employees (*Ibid.*). As we have said earlier, the list of employees of the Commission on Audit to be purged was submitted by Mr. Mathay on August 28, 1978, when petitioner had still a pending administrative case.

The cases cited by petitioner are not in point. The case of *Abellera vs. City of Baguio*, *supra*, refers to administrative suspension of a cashier in the Office of the City Treasurer of Baguio who was charged administratively for dishonesty and gross negligence in the performance of official duty. In this case, the cashier, when found guilty by the Civil Service Commissioner of the charges against him, was deprived of work for two years, although on appeal to the Civil Service Board of Appeals, the ruling was modified by reducing the penalty imposed on him to only two months suspension without pay.

On the other hand, the cases of *Tañala vs. Legaspi*, *supra*, and *Sison vs. Pajo*, *supra*, refer to illegal dismissal.

The case of *Tañala vs. Legaspi* involves the administrative suspension and later, separation of a sanitary inspector from the government service who was later acquitted of the criminal charges against him and whose reinstatement was ordered by the President of the Philippines after a reversal of the decision of the Civil Service Commissioner in the administrative case which ordered his separation.

The case of *Sison vs. Pajo* deals with illegal dismissal and replacement of an employee who, by reason of the preference established by law in force at the time of his appointment, was entitled to keep his position until the Commissioner of Civil Service certified to the availability of a civil service eligible.

Petitioner relies further "as a matter of precedent" on the cases of other purged Commission on Audit officials, particularly Jose Trinos, former Department Manager, and Nicasio Pinto, former Assistant Auditor of Manila, who were allegedly both paid their back salaries covering the periods when they were purged.

The argument of the Solicitor General on this point is well taken:

"But petitioner is, as a matter of fact, differently situated than Messrs. Trinos and Pinto. The records in the Commission on Audit disclose that the case of Mr. Jose Trinos like those of other graduates of the Career Executive Service Development Program (CESDP) was taken cognizance of by a Special Committee created under Administrative Order No. 371 dated November 13, 1975; that upon recommendation of such committee, President Marcos issued Administrative Order No. 375 on December 25, 1975 whereby he reconsidered the acceptance of the resignation of Mr. Trinos, among others, and reinstated him to his position as Commission on Audit Department Manager 'effective as of the date their (his) respective resignation was accepted.' A copy of said administrative order No. 375 is attached as Annex '2'. The precise tenor of such order of reinstatement clearly signifies that Mr. Trinos was deemed as never having been out of the service since the effectivity of his reinstatement was made to retroact to the date of his separation. Nor was he considered under suspension during the intervening period. Thus, Mr. Trinos was clearly entitled to collect the salaries corresponding to the said period. In contrast, petitioner's reinstatement was made 'effective immediately,' i.e., as of March 28, 1977.

"In the case of Mr. Pinto, records in the Commission on Audit completely belie petitioner's allegation. For, as disclosed therein, Mr. Pinto collected the money value of his leave credits, not his salaries, corresponding to the period that he was out of the service, from October 1, 1975 to January 5, 1977, as a result of his 'purge.' A certification to this effect, issued by the City Auditor Arturo V. Uy of Manila on March 9, 1978, is attached as Annex '3'" (pp. 43-44, *rec.*).

In the case at bar, herein petitioner who is not a Presidential appointee, did not tender a resignation, but was

removed. Not a graduate of CESDP, his reinstatement was not made retroactive to the date of his resignation. The memorandum of Presidential Executive Assistant Jacobo Clave clearly states that reinstatement was to take effect "immediately." As regards the case of Mr. Pinto, suffice it to say that as the certification will show that he collected the money value of leave credits, it was not possible that he could still collect back salaries for the period he was out of the service.

Because petitioner had made several pleas for reinstatement to the President and followed up his case for no less than "fifty times" (Letter of Appeal dated November 26, 1976, 201 File), stressing the mental anguish and financial hardships he suffered as a result of his separation from the service (letter dated March 11, 1977, 201 File) and citing his 38 long years of loyal and dedicated service to the government and his achievements in his job (Ibid.), the President ordered his reinstatement only -- without back salaries.

No back salaries, therefore, can be ordered paid to petitioner. Petitioner, however, pursuant to the decision of the presidential executive assistant dated August 30, 1977, may charge the period of his suspension against his leave credits, if any, and may commute such leave credits to money value.

WHEREFORE, THE INSTANT PETITION IS HEREBY DISMISSED. NO COSTS.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

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