

GUILLERMO GONZALES, PETITIONER AND APPELLANT, VS. THE HON. JAIME HERNANDEZ, AS SECRETARY OF FINANCE AND JOVENCIO FOJAS, RESPONDENTS AND APPELLANTS.

G.R. No. L-15482. May 30, 1961

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a6a0e3e9165a/>

LABRADOR, J.:

Appeal by both petitioner and respondents against a decision of the Court of First Instance of Manila, Hon. Carmelino G. Alvendia, presiding, in Special Civil Action No. 37553, entitled "Guillermo Gonzales, petitioner, versus the Hon. Jaime Hernandez, as Secretary of Finance, and Jovencio Fojas, respondents." The dispositive part of said decision is as follows:

"WHEREFORE, the Court hereby declares the appointment of Atty. Jovencio Fojas as merely temporary in nature. The Court furthermore orders the respondent Secretary of Finance to terminate the appointment of Atty. Jovencio Fojas and to reinstate the petitioner Guillermo Gonzales to the position presently occupied by Atty. Fojas as attorney-agent of the Investigation and Secret Service Division of the Department of Finance, but without any right to salary until he is actually reinstated and only from the date of his reinstatement.

"Petitioner is not entitled to recover damages nor attorney's fees. No pronouncement as to costs. (Brief for the respondents, p. 8)

On September 16, 1958, petitioner Guillermo Gonzales filed an action for mandamus and quo warranto with the Court of First Instance of Manila seeking (a) to compel respondent Secretary of Finance to reinstate him to his former position as Attorney-Agent in the Department of Finance; (b) payment of back salaries from May 23, 1955 up to the time of reinstatement, excluding the salaries for two months of suspension in accordance with the decision of the Civil Service Board of Appeals; (c) the removal of respondent Jovencio Fojas as Attorney-Agent in the Department of Finance; (d) payment of P2,000 as attorney's fees; and (e) payment of costs of the suit. Respondents alleged the following special and affirmative defenses: petitioner's resignation from his position and his acceptance of another position in the Government Service Insurance System amounted to an abandonment of his right to reinstatement; Cabinet Resolution dated July 13, 1937 is inapplicable to the case at bar; the reinstatement of petitioner violates Executive Order No. 11 against nepotism because his wife is already employed in the same Department; and lastly, petitioner has not exhausted all administrative remedies. They therefore pray for the dismissal of the action.

The case was submitted upon a stipulation of facts, which reads as follows (unnecessary portions omitted):

"1. That petitioner was appointed in February 1954 an attorney-agent of the Investigation and Secret Service Division, Department of Finance, but in Administrative Case No. R-11119 instituted against him, he was found guilty of disreputable conduct prior to entering the service, and called upon to resign or be separated for cause as per decision of the Commissioner of Civil Service dated March 11, 1955;

"2. That on May 23, 1955 petitioner filed with the Department of Finance a letter of resignation, the pertinent

portion of which reads as follows:

'* * * subject to the result of my appeal with the Civil Service Board of Appeals, and to the provisions of the Resolution of the Cabinet on July 17, 1937';

"3. That petitioner's aforequoted tender resignation was accepted on May 28, 1955 as per a letter of the Undersecretary of Finance;

"4. That petitioner appealed from the decision of the Commissioner of Civil Service * * * but did not formally notify respondent Secretary of Finance of the filing or pendency of the said appeal;

"5. That on November 15, 1955 petitioner's wife Lilia V. Gonzales was appointed to his former position, * * *. Said appointment automatically became permanent with six (6) months from and after November 15, 1955;

"6. That on July 1, 1957, petitioner's wife was promoted as Economist Tax Researcher of the Department of Finance and respondent Jovencio Fojas, a member of the Philippine Bar was appointed to the position in turn vacated by her;

"7. That petitioner applied for and accepted an employment as emergency helper in the Government Service Insurance System at P6 per day and worked as such from August 6, 1956 until his services were terminated effective on July 24, 1957;

"8. That the Civil Service Board of Appeals, modified the decision of the Commissioner of Civil Service as per a decision dated August 5, 1957, the dispositive portion of which reads as follows:

'In view of the foregoing this Board feels justified in modifying the penalty imposed by the Commissioner of Civil Service and imposes upon the respondent a suspension of two months without pay. Considering, however, that this decision is not an exoneration, it is the feeling of this Board that respondent, once reinstated to his former position, shall not be entitled to collect his salaries during the period of his suspension';

* * * * *

"9. That the Civil Service Board of Appeals sent a copy of said decision to the Office of the Secretary of Finance on November 22, 1957;

"10. That petitioner was notified and received a copy of the decision of the CSBA on January 17, 1958 and that forthwith on the following official day, January 20, 1958, petitioner went to the Department of Finance and informed in writing the Secretary of Finance thru the Administrative Officer, Geminiano Cabangon, Sr., that petitioner is reporting for duty the following day, January 21, 1958, * * *;

"11. That effectively on the following three successive days, i. e., January 21, 22 and 23, 1957, petitioner reported for duty * * *;

* * * * *

15. That the Commissioner of Civil Service * * *; ruled among others, that petitioner is entitled as of right and should now be reinstated to his former position, and with respect to the filling of position by another pending final decision of his appeal by the CSBA, attention was invited to the Cabinet Resolution dated July 17, 1937;

"16. That petitioner, in his letter of May 23, 1958 (Annex "E" of the petition) addressed to the Secretary of Finance, reiterated his request for reinstatement in view of the ruling made by the Commissioner of Civil Service;

"17. That in view of petitioner's request for reinstatement respondent Secretary of Finance sent a 2nd indorsement dated June 2, 1958 to the Civil Service Board of Appeals, stating all the reasons why he could not reinstate

petitioner and requesting clarification or an opinion in regards to petitioner's case, but the Board has not yet replied to said communication. Petitioner was furnished a signed copy of said indorsement of June 2, 1958, a true copy of which is attached as Annex "1" of respondent's answer." (pp. 32-35, record.)

Upon the pleadings and the above stipulation of facts, the lower court rendered the decision appealed from. It declared that the Undersecretary of Finance had no right to treat petitioner's letter of conditional resignation as an absolute one, and held that the Undersecretary's unconditional acceptance of petitioner's conditional resignation is equivalent to a rejection of said resignation and petitioner's position did not become vacant thereby; that petitioner's acceptance of an emergency position in the Government Service Insurance System is not an abandonment of the position in question, as it is not incompatible with his claim for reinstatement; that the appointment of respondent Fojas to the position of the petitioner is only temporary in nature, in accordance with Cabinet Resolution of July 13, 1937; that said Resolution is applicable to the case at bar, otherwise, in case like this the Secretary of Finance would have the power to negate the decision of the Civil Service Board of Appeals by issuing a permanent appointment to another.

From this decision, both the petitioner and the respondents have appealed. Petitioner appeals from the decision only insofar as it denies him payment of back salaries, attorney's fees and costs.

The errors assigned by the Solicitor General may be resolved by determining the following questions, namely, (a) May the petitioner be considered validly resigned when his conditional resignation was unconditionally accepted by the Undersecretary of Finance? (b) Is petitioner deemed to have abandoned his position by accepting another position of emergency laborer in the GSIS?

The first question should be resolved in the negative. In the first place, there is no resignation to speak of, because there was no intention on plaintiff's part to relinquish his position as attorney-agent in the Department of Finance. To constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position:

"* * * But to constitute a complete and operative resignation of public office, there must be an intention to relinquish a part of the term, accompanied by the act of relinquishment * * *." (43 Am. Jur. p. 22)

"* * * and a resignation implies an expression by the incumbent in some form, express or implied of the intention to surrender, renounce, or relinquish the office, and an acceptance by competent and lawful authority." (Nome vs. Rice, 3 Alaska 602) (2 Bouvier's Law Dictionary, p. 2407)

In the case at bar, plaintiff's resignation was made expressly "subject to the result of my appeal to the Civil Service Board of Appeals, and to the provisions of the Resolution of the Cabinet on July 17, 1937." The decision of the Civil Service Board of Appeals modified that of the Commissioner of Civil Service, ordering plaintiff to be reinstated to his old position. There can not be any resignation to speak of therefore.

The second question should also be resolved in the negative. Plaintiff's position in the GSIS was temporary in nature, during the period of an emergency only. He had the right to live during the pendency of his appeal and naturally the right to accept any form of employment. In any case, as the court below found, this temporary employment is not incompatible with his old position; he could resign this temporary position any time as soon as his case has been definitely decided in his favor. To this effect is a previous ruling of the Court, thus:

"The fact that during the pendency of the petitioner's appeal in the Civil Service Board of Appeals, he worked as clerk in the office of the Provincial Treasurer of Leyte from 2 March 1951 to 17 February 1955 and received the salary as such in the total sum of P5,509.63 does not constitute abandonment of his former position. He was ordered to resign from the service with prejudice to reinstatement pursuant to the decision of the Commissioner of Civil Service and by virtue thereof was prevented from exercising the functions of his

position and receiving the corresponding compensation therefor. While thus deprived of his office and emoluments thereunto appertaining the petitioner had to find means to support himself and his family. The fact that during the time his appeal was pending and was thus deprived of his office and salary, he sought and found employment in another branch of the government does not constitute abandonment of his former position. * * *. (Tan vs. Gimenez, et al., 107 Phil., 17; Potot vs. Bagano, 82 Phil., 679; 46 Off. Gaz., 3058).

Another objection against the petition is the fact that his wife is now employed in the same office. This objection can not lie against petitioner's reinstatement; the objection did not exist at the time of his original appointment. He was already employed before his wife was appointed. The objection does not lie, therefore, against his reinstatement; if it is to be applied at all it should be against his wife's appointment, not against his own.

We now proceed to discuss the lone assignment of error of the plaintiff-appellee. Appellee is claiming back salaries, attorney's fees and damages. His claim is devoid of merit.

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.

In a statement filed before Us by counsel for petitioner-appellant, it is made to appear that respondent Jovencio Fojas is no longer holding the item in question. This manifestation is not denied by the counsel for the respondents. However, there is no showing that said item, if already vacated by respondent Jovencio Fojas, has been given to another, or has been eliminated from the Appropriations Act. There is, therefore, no impediment to petitioner's reinstatement.

Wherefore, the decision appealed from is hereby affirmed in toto, without costs.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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.