

**ANACLETO B. ALZATE, IN HIS OFFICIAL CAPACITY AS PRINCIPAL
OF THE SOUTH PROVINCIAL HIGH SCHOOL, AGOO, LA UNION,
PETITIONER, VS. BENIGNO ALDANA, IN HIS OFFICIAL CAPACITY AS
DIRECT...**

G.R. No. L-18085. May 31, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This is an action of mandamus to compel the respondents Benigno Aldana, in his official capacity as Director of Public Schools and Zacarias G. de Vera, as Division Superintendent of Schools of La Union Province, to adjust petitioner Anacleto B. Alzate's salary as Principal of the South Provincial High School of Agoo, La Union, pursuant to Republic Act No. 842, otherwise known as the "Public School Salary Act of 1953."

Petitioner Anacleto B. Alzate, was the principal of the South Provincial High School, Agoo, La Union, when this case was filed on June 11, 1958 and retired under Republic Act No. 1616, on July 31, 1959. He had been in the service of the Bureau of Public Schools for 24 years as of July 1, 1957. He qualified in the Superintendent of Private Schools civil service examination on March 24, 1956.

On June 3, 1957, Republic Act No. 2042 took effect, appropriating the sum of P3,028,000.00 to effect the salary adjustment and/or increases of officials, teachers, and other personnel in the public high schools, in accordance with the Public School Salary Act of 1953, providing for the minimum and maximum compensation of public school officials (Sec. 2) and, also, automatic salary increases as follows:

- "for every five years of service rendered prior to and after the approval of this Act, with a general average efficiency rating of Above Average for the five year period, one salary rate." (Sec. 4-a)
- "for qualifying in the next higher civil service examination, one salary rate." (Sec. 4-b)

On November 8, 1957, petitioner received from respondents Benigno Aldana (as Director of Public Schools) and Zacarias de Vera (as Division Superintendent of Schools for La Union) his salary adjustment under said Republic Acts Nos. 842 and 2042, at the rate of P30.00 a month, i.e., his salary was adjusted from P230.00 to P260.00 a month. Said adjustment is distributed as follows: P15.00 for his minimum salary which, under the law, should be P245.00 a month, and P15.00, which corresponds to 1 rate automatic salary increase.

Because in the adjustment of his salary, petitioner received an automatic increase of only 1 rate from the entrance salary of his position as high school principal, he wrote, on December 20, 1957, a letter to the Director of Public Schools, requesting that he be granted an automatic salary increase of 5 rates, in accordance with the provisions of Sections 4-a and 4-b of Republic Act No. 842, explaining that he is entitled to 4 automatic salary rates for having rendered 24 years of service in the educational branch of the government as of July 1, 1957, and 1 automatic salary rate for qualifying in the Superintendent of Private Schools civil service examination, which is higher than his Senior Teacher eligibility, the one required for the position of high school principal. The Director of Public

Schools denied petitioner's request in an indorsement dated March 10, 1958.

On May 17, 1958, petitioner wrote another letter to the Director of Public Schools, asking for reconsideration of the latter's decision. When the action of said official to his said request for reconsideration was not forthcoming, petitioner filed this instant action for mandamus with the court below (Court of First Instance of La Union, Case No. 1308) on June 11, 1958.

On June 27, 1958, respondents, thru counsel, agreed in open court that the Director of Public Schools would recommend to the proper officials, not later than June 30, 1958, the sum of P840.00 to accounts payable, the amount being claimed by petitioner, and all other sums which said Director may believe necessary for the interest of all other school officials and teachers who may be benefited by whatever favorable decision, if any, that may be secured by petitioner in this case (see Order of June 27, 1958). Due to such assurance, petitioner desisted in pressing for the resolution of his prayer for preliminary injunction. Consequently, on June 30, 1958, the amount of P1,146,522.06 was obligated.

Upon a motion to dismiss filed by respondents, the court below dismissed the petition, on the ground of non-exhaustion of all administrative remedies (see Order dated July 31, 1958). Petitioner thereupon appealed the order of dismissal to this Court (docketed as G. R. No. L-14407). On February 29, 1960, this Court, in a decision, ruled to set aside the order appealed from, and the case was remanded to the court a quo for further proceedings.

After a hearing on the merits, the court below rendered a decision on November 5, 1960, declaring petitioner entitled to 4 rates of salary increase from the minimum salary allocated for his position, corresponding to his 24 years of service in the educational branch of the government, in accordance with Section 4-a of Republic Act No. 842; but holding that a writ of mandamus cannot be issued to compel respondent Director of Public Schools to recommend petitioner to another salary increase of one rate, for his qualifying in the Superintendent of Private Schools examination.

Dissatisfied with said decision, petitioner brought to us the present appeal, with the following assignment of errors:

- The lower court erred in holding that there was absence of showing that the respondents have the power and imperative duty to recommend petitioner to another automatic salary increase of one rate for qualifying in the Superintendent of Private Schools examination.
- The lower court erred in not issuing the writ of mandamus prayed for, after having recognized that the petitioner is entitled to another automatic salary increase of one rate for qualifying in the Superintendent of Private Schools examination.

As a rule, mandamus lies against an officer who unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station (Sec. 3, Rule 67, Rules of Court). The duties to be enforced by such extraordinary legal remedy must be such as are clearly and peremptorily enjoined by law or by reason of official station. If for any reason, the duty to be performed is doubtful, the obligation is not regarded as imperative and the applicant will be left to his other remedies. It is equally necessary that the respondent have the power to perform the act concerning which the application for mandamus is made. If the respondents have not the power to perform the act, mandamus will not issue, however clear his duty to perform may be. (*Tabigue, et al. vs. Duvall*, 16 Phil. 324). Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. (*Gonzales vs. Board of Pharmacy*, 20 Phil. 367; *Vda. y Hijos de Zamora vs. Wright*, 53 Phil. 613; *Samson vs. Barrios*, 63 Phil. 198.)

Is the act sought to be done by appellant, namely, the recommendation by appellees of one more rate of salary increase, one which the law specifically enjoins as a duty resulting from an office? We do not think so.

In the first place, it appears that in view of the representations and recommendation made by the Commissioner of the Budget, the Cabinet authorized the release of P3,028,000.00 appropriated by Republic Act No. 2042 to implement the provisions of Republic Act No. 842, subject to the following condition:

"(1) That the adjustments of salaries should be limited to 4 rates from the minimum salary for the position and/or in the same manner the salaries of officials, teachers and other school personnel in the national rolls were adjusted out of the funds appropriated under Republic Act No. 1230, in accordance with the Resolution dated December 19, 1956 of the Cabinet." (*Italics supplied.*)

Under said Cabinet directive, appellees may not, without violating the same, recommend more than 4 rates increase from the minimum salary for the position.

Secondly, Section 7(4) of Commonwealth. Act No. 246, provides:

"(4) Allotment of lump-sum appropriations and special and other funds; plantilla of personnel.-The provisions of any law to the contrary notwithstanding, expenditures from lump sum appropriation authorized for any executive department in any annual General Appropriation Act or other Act and from all special, bond, trust and other funds shall be made in accordance with a Budget to be approved by the President, which shall include the plantilla of personnel, showing the number of each kind of position, the designation, the salary proposed for the fiscal year for which the appropriation is intended and the salary actually received. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover the cost of special services to be rendered to private parties." (*Italics supplied.*)

Note that there is nothing under said provision which specifically enjoins appellees to perform as a duty said act of adjustment and recommendation to such salary increase. Thereunder, it is the President who approves the adjustment and no mention is made of any duty of appellees on the matter. In this connection, the trial court aptly observed that:

"Lump sum appropriations of the national funds of the government are invariably made by the legislature out of any funds in the National Treasury not otherwise appropriated' (Rep, Act No. 1230), and recommendations made by the Commissioner of the Budget are advisedly given weight. For this reason, not all laws Standardizing the salaries of a given group of employees, like; Republic Act No. 842, are self-executing, or immediately enforceable, unless certain budgetary procedures are complied with."

Appellant cites Section 910(c) of the Revised Administrative Code which empowers the Director of Public Schools to "fix the salaries of teachers within the limits established by law" in support of his contention that appellees have the duty to recommend his additional salary increase in question. We agree with the Solicitor General that said provision is too broad and general and cannot prevail over specific provisions, particularly, on the disposition of lump sum appropriations as provided in the quoted Section 7(4) of Commonwealth Act No. 246, where only the President is enjoined by law to act on the matter.

For all the foregoing, we agree with the trial court that appellees have no clear legal duty to perform the act sought to be done by appellant and, therefore, the writ of mandamus sought by him does not lie.

WHEREFORE, the decision appealed from is hereby affirmed in all respects, with costs against the appellant.

SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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