

**LEO Y. MABULAY, PETITIONER, VS. HON. JESUS V. SERIÑA, CITY
MAYOR OF CAGAYAN DE ORO CITY, HON. ISMAEL MATHAY,
AUDITOR GENERAL OF THE PHILIPPINES, LEONCIO MENDOZA,
TREASURER OF TH...**

G.R. No. L-28636. June 29, 1982

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/bed3a4b4530b/>

ABAD SANTOS, J.:

This appeal was made pursuant to Rule 42 of the Rules of Court. It involves a decision of the Court of First Instance of Misamis Oriental in Sp. Action No. 2805 for mandamus with damages. The decision which gives the facts and the law as found by Judge Bernardo Teves reads as follows:

"This is a petition for mandamus with damages, praying that respondent-officials be ordered to pay and/or cause the payment of petitioner's salary as Acting City Engineer of Cagayan de Oro City.

"Respondents in their answers deny the right of petitioner to the salary claimed by him.

"From the stipulation of facts and exhibits submitted for decision, pages 89-98, record, it appears that:

"On October 3, 1963 petitioner, Leo Y. Mabulay, assumed the position of Acting City Engineer of Cagayan de Oro upon designation by President Diosdado Macapagal. (Exhibit 1.)

"On October 12, 1963 the Court of First Instance, in Sp. Civil Case No. 2268 filed by Engineer Herminio Lucero disputing and denying petitioner's right to the position, restrained petitioner from exercising his functions as Acting City Engineer. On February 26, 1964 the case was dismissed.

"On March 6, 1964 petitioner was again restrained from discharging his functions in Sp. Civil Case No. 2323 filed by the same Herminio Lucero. On March 29, 1964 the Court dismissed the case. (The Supreme Court affirmed the dismissal, G.R. No. L-23189.)

"On May 29, 1964 petitioner assumed the same position upon another designation by President Macapagal.

"On May 21, 1965 Congress adjourned its regular session without acting on petitioner's designation. This notwithstanding, he continued occupying his position and exercising its functions, powers and prerogatives from May 22, 1965 until November 3, 1965.

"On November 3, 1965 one Procopio Resabal was appointed City Engineer of Cagayan de Oro, vice the petitioner.

"In his petition it is prayed that petitioner be paid his salary as Acting City Engineer of Cagayan de Oro corresponding to the following periods, to wit:

a) From October 3, 1963 to

May 29, 1964 P 6,649.36

b) From May 22, 1965 to

November 3, 1965 6,146. 50

Total - P12 ,795.86

"On April 29, 1965 petitioner submitted to respondent City Mayor of Cagayan de Oro his salary voucher as Acting City Engineer in the amount of P7 ,264.51 covering the period from October 3, 1963 to May 21, 1964. (Exhibit 2.) This claim was disallowed on August 4, 1965 by the Deputy Auditor General on the ground that:

(1) Assistant Civil Engineer Herminio Lucero actually discharged the duties of the position of Acting City Engineer of Cagayan de Oro City and was paid the compensation appurtenant thereto during the period in question pursuant to the designation of the President x x x and

(2) Even assuming arguendo that Engineer Lucero became an officer de facto after the President of the Philippines terminated his services on September 29, 1963 and had designated Engineer Mabulay in his stead, it has been held that:

'If payment of the salary or other compensation be made by the government, in good faith, to the officer de facto, while he is still in possession of the office, the government cannot be compelled to pay it a second time to the officer de jure when he has recovered the office, at least where the officer de facto held by color of title.' (Machem , The Law of Offices and Officers, Sec. 332, p. 222.) (Exhibit 8.)

"On August 10, 1965 petitioner appealed the ruling of the Deputy Auditor General to the President of the Philippines (Exhibit 11) but withdrew it on December 6, 1965. (Exhibit 13.)

"Another claim for payment of his salary as Acting City Engineer was filed by petitioner in the amount of P1 ,137.91 covering the period from May 21, 1965 to June 30, 1965. (Exhibit 22.) On October 12, 1965 the Deputy Auditor General denied his claim for the reason that Congress having adjourned on May 20, 1965 without acting on petitioner's designation, and the same not having been extended by the President, petitioner had no legal right to continue discharging the duties of City Engineer of Cagayan de Oro and therefore could not be allowed to collect the salary pertaining to the position; and he could not be considered officer de facto as the Municipal Board had been questioning the legality of his continuance in office. (Exhibit 27.)

"In view of the disallowance of his claim by the Deputy Auditor General, petitioner appealed to the Office of Executive Secretary alleging that as de facto Acting City Engineer of Cagayan de Oro he should be paid for services actually rendered during the period from May 21 to July 31, 1965. On January 20, 1966 this claim was denied by the Executive Secretary (Exhibit 32), by authority of the President, who found that the records of his case not only did not support, but also belied and demolished, petitioner's claim that he was a de facto Acting City Engineer or that the 'City Mayor of Cagayan de Oro and other local officials allowed him to continue discharging the duties of the office or considered him a de facto officer with the right to enjoy the privileges and salary attached to the position,' that his representation was specious, self-serving and uncorroborated, and that his claim for salary 'must necessarily crumble for lack of a leg to stand on.'

"The records, therefore, show that petitioner had made claims for payment of his salary corresponding to the following periods only, to wit:

a) from October 3, 1963 to May 21, 1964

b) from May 21, 1965 to July 31, 1965;

that said claims were made to the proper administrative authorities and thru the proper administrative channels; and that after a careful consideration of said claims the same were disallowed, definitively and finally, by the Auditor General and the Executive Secretary, acting by authority of the President of the Philippines, for reasons already mentioned before. (Exhibits 8, 27, 32.) The findings and conclusions of the Executive Secretary likewise

apply to the period after July 31, 1965 until November 3, 1965 when one Procopio Resabal was appointed City Engineer of Cagayan de Oro, vice the petitioner. (Paragraph 10, Stipulation of Facts.)

"The administrative decisions on the claims of petitioner being final they are a bar to, and cannot be circumvented by, the filing of the pre-sent action. (Mangonon , L-14445, March 30, 1962; Sambo , L-12548, Feb. 27, 1959.) The matter of passing in audit a salary voucher is not a ministerial function; the Auditor General exercises discretion or a quasi-judicial power when he acts on whether to pass a salary voucher in audit or not (Gonzales, L-20568, Dec. 28, 1964); hence his decisions cannot be controlled by mandamus, a remedy designed to compel performance of a ministerial duty which is clear and specific, not to control or review the normal exercise of judgment or discretion. (Llanto, 63 Of. Gaz. 5352.) And administrative decisions on matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud or error of law (Pindangan, L-14591, April 25, 1962; Lovina, L-17821, Nov. 29, 1963; Timbancaya, L-19100, Dec. 27, 1963), vices nowehre perceptible in the decisions of the Auditor General and the Executive Secretary on petitioner's claims; on the contrary, their decisions and the proceedings leading thereto evince good faith and an earnest effort to study and consider carefully petitioner's claims.

"WHEREFORE, petition dismissed. Costs against petitioner."

The appellant, Leo Y. Mabulay, makes the following assignment of errors:

"I. THAT THE LOWER COURT ERRED IN HOLDING THAT THE OPINIONS OF THE DEPUTY AUDITOR GENERAL AND EXECUTIVE SECRETARY UNDER THE ADMITTED FACTS DENYING PETITIONER-APPELLANT'S CLAIM FOR BACK SALARIES EARNED BARRED THE INSTITUTION OF THE PRESENT ACTION.

"II. THAT GRANTING BUT WITHOUT ADMITTING THAT THE OPINIONS OF THE DEPUTY AUDITOR GENERAL AND EXECUTIVE SECRETARY IN THE CASE AT BAR ARE FINAL AND CANNOT BE REVIEWED, THE LOWER COURT ERRED IN HOLDING THAT THE SAME APPLIES TO ALL THE TOTAL CLAIMS FOR BACK SALARIES EARNED BY THE PETITIONER-APPELLANT BUT SHOULD ONLY APPLY TO THE PERIOD COVERING OCTOBER 3, 1963 TO MAY 21, 1964 AND MAY 21, 1965 TO JULY 31, 1965.

"III. THAT THE LOWER COURT ERRED IN NOT HOLDING THAT PETITIONER-APPELLANT WAS A DE FACTO OFFICER FROM MAY 21, 1965 TO NOVEMBER 3, 1965, ACTUALLY IN POSSESSION OF AND CONTROL; AND DISCHARGING THE DUTIES AND FUNCTIONS OF CITY ENGINEER FOR THE CITY OF CAGAYAN DE ORO AND THEREFORE ENTITLED TO BACK SALARIES EARNED FOR SAID PERIOD.

"IV. THAT THE LOWER COURT ERRED IN DISMISSING THE PETITION."

The appeal is devoid of merit.

The appellant claims that a salary for the period October 3, 1963 to May 29, 1964 (according to his petition) or May 21, 1965 (according to Exhibit 2) should be paid to him because between those dates he was acting City Engineer of Cagayan de Oro City. However, as stated in the decision of Judge Teves the claim was disallowed by the Deputy Auditor General on August 4, 1965, and an appeal to the President of the Philippines was withdrawn on December 6, 1965. The withdrawal of the appeal laid to rest the appellant's claim for salary covering the period above-mentioned; it resulted in the finality of the decision of the Deputy Auditor General.

The fact that it was not the appellant but the Auditor of Cagayan de Oro City who brought the matter to the Auditor General will not produce a different result. C.A. No. 327 lays down the procedure for the settlement of claims submitted to the Auditor General and the statute makes no distinction in respect of the party who brings the claim be it the claimant or someone else. Neither will it make any difference that it was not the Auditor General

but only his deputy who denied the appellant's claim. It must be presumed, and there is no evidence to the contrary, that the Deputy Auditor General acted pursuant to authority given to him by the Auditor General. Further on this matter, if We are to agree with the appellant that the Deputy Auditor General had no power to definitively act on his claim, then he should have exhausted administrative remedies by appealing to the head of the office but he did not so that every step he took thereafter was premature.

The appellant's claim of salary for the period May 21, 1965 to July 31, 1965, is likewise untenable. For as stated by Judge Teves, this claim was disallowed definitively and finally, by the Auditor General and the Executive Secretary, acting by authority of the President of the Philippines. Those officials having ruled on the merits of the appellant's claim, their decision was final and cannot be circumvented by the filing of an action in court (see *Sambo vs. The Auditor General*, 105 Phil. 1257 [1959]) unless it is shown that they committed a grave abuse of discretion which has not been shown in this mandamus case.

The appellant contends that the decisions on his claims for salaries for the periods from October 3, 1963 to May 21, 1964, and May 21, 1965 to July 31, 1965, cannot bar his claim for salary for the period covering August 1, 1965 to November 3, 1965, because the latter claim has not been ruled upon by the Auditor General nor the Executive Secretary. It is precisely because the Auditor General had not ruled on this particular claim that the appellant's suit must fail. For he should have given the Auditor General opportunity to pass upon his claim and he acted prematurely when he went to court to compel its payment by mandamus. Moreover, the Auditor General or Commission on Audit cannot be compelled by mandamus to pass in audit a salary claim. Audit involves the exercise of discretion; it is a quasi-judicial function. Hence the trial court could not have mandated the passing in audit of the appellant's claim. (*Gonzales vs. The Provincial Auditor of Iloilo*, 120 Phil. 1508, 1513 [1964].)

The appellant claims that he actually discharged the powers and duties of the City Engineer of Cagayan de Oro from May 21, 1965 to November 3, 1965 and no person was paid the salary pertaining to the position for that period ergo he should be paid the corresponding salary because the City of Cagayan de Oro received the benefit of his services as a de facto officer.

The period May 21, 1965 to November 3, 1965 covers the following:

May 21, 1965 to July 31, 1965. As stated above the appellant's claim for salary for this period has been finally and definitively disallowed by both the Auditor General and the Executive Secretary.

August 1, 1965 to November 3, 1965. As stated above his claim for salary for this period has not yet been passed upon by the Commission on Audit, consequently he should give that office an opportunity to act on his claim before he pursues other remedies.

WHEREFORE, the appeal is dismissed for lack of merit. No costs.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Barredo, J., (Chairman), no part. As Solicitor General he signed brief for the Auditor General.

De Castro, J., no part. As Assistant Solicitor General he signed brief for the Auditor General.

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.