

LEONARDO AVILA, PETITIONER, VS. HONORABLE AUDITOR GENERAL, RESPONDENT.*G.R. No. L-37606. July 15, 1974*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c3ab3385c997/>**FERNANDO, J.:**

It is a truism that the zeal of counsel in his task of Advocacy is commendable. His persistence in the discharge of his responsibility is understandable. It loses merit though if the pleadings submitted by him do not reveal an adequate grasp of the law and the judicial decisions. The time may come when his insistence amounts to sheer obstinacy. It is then likely to produce not persuasion but the opposite. Such reflections are induced by the third motion for reconsideration filed by petitioner. It is denied. It may not be too much to hope that by this time, the realization would dawn on counsel for petitioner that any further intrusion into the time and attention of this Court is far from welcome.

The issue raised by petitioner in this appeal from an adverse decision of respondent Auditor General is whether a provincial officer, here a Provincial Treasurer, who was preventively suspended from office as a result of the filing of a criminal case for malversation of public funds and found administratively guilty of gross negligence, with the criminal prosecution being thereafter dismissed after twenty-one years, is entitled to back salaries covering the period of his suspension. The petition was filed on October 25, 1973. Solicitor General Estelito P. Mendoza was asked to comment. That he did. Had petitioner studied more carefully such comment, the weakness of his case would have been quite apparent. His own thirty-five page petition made clear that there was no acquittal but a dismissal caused primarily by the principal witness for the prosecution, the Provincial Auditor, having died on August 19, 1964. It was likewise admitted by him that there was a previous administrative decision finding him guilty of gross negligence. Nonetheless, counsel for petitioner asked that he be given an opportunity to submit a reply and he was granted his prayer. He did so on January 21, 1974 in a pleading of eighteen pages. It did not change matters any. He ought not to have been surprised then when this Court, in a resolution of January 28, 1974, denied his motion for lack of merit. He did present a seventeen-page motion for reconsideration dated February 21, 1974. Again it was very well refuted by the Solicitor General. Hence, the motion was denied for lack of merit.

In the second and third motions for reconsideration, however, he would raise procedural points. His stand is even more untenable. He would repeat to the point of monotony that he had a right to appeal directly to this Court. He ought to have known better. As far back as June 25, 1973, this Court, in *Philnabank vs. Auditor General*,^[1] ruled that only a private party or entity, not a public official, can appeal directly to the Supreme Court from a ruling of the Auditor General. As set forth in the opinion: "Whatever else the Philippine National Bank may be — whether as a corporation its functions are purely governmental or proprietary — it is a government-owned and controlled corporation, created by statute and the existence of which is subject to the law-making body. The employees of the Bank are government employees, although not in the political sense, that is, as occupants of public offices through which the functions of sovereignty are exercised. Indeed, the very fact that for auditing purposes the Bank

is under the Auditor General, who audits its finances and accounts and keeps a representative there for the purpose (Sec. 584, Ad. Code as amended by Rep. Act No. 2266), demonstrates beyond doubt that its employees — and hence the union formed by them — are not 'a private party or entity' who may appeal from his ruling directly to the Supreme Court instead of to the President. The Leave Law itself places employees of government-owned or controlled corporations together with the national, provincial, municipal and city governments with respect to the grant of vacation leave privileges. (Sec. 284, Rev. Ad. Code)."[2]

Exactly one month later, on July 25, 1973, in *Buendia vs. City of Baguio*,[3] this Court, through Justice Teehankee, reiterated the above doctrine in these words: "Petitioners' appeals at bar from the adverse ruling of the Auditor General, having been filed on March 1, 1971 and September 7, 1971, respectively, are governed by the provisions of the 1935 Constitution (section 3, Article XI) and by the implementing Act, Commonwealth Act No. 327, whereunder only a 'private party or entity' may appeal from the Auditor-General's decision directly to the Supreme Court; otherwise the appeal should be taken to the President, whose action shall be final. This was but recently affirmed by the Court in *PEMA vs. Auditor General*, supra, wherein the therein petitioner-union's appeal to this Court was dismissed 'since the members of petitioner-union are employees of the Philippine National Bank, which is a government-owned and controlled corporation, they are government employees and not private person or entities,' who may appeal the Auditor-General's ruling 'directly to the Supreme Court instead of to the President.'"[4]

The other procedural question raised, namely, whether a petition, one moreover, in the language of Justice Holmes, suffering from congenital infirmity, can be dismissed by a mere resolution, shows lack of awareness of a well-settled principle that goes back to *Soncuya vs. National Law Investment Board*.^[5] What is more, the Constitutional Convention composed of many delegates whose learning in the law is beyond cavil, did expressly recognize the practice of the Supreme Court of summarily disposing petitions for certiorari, when it incorporated the last sentence of Section 9 of Article X. It reads: "The Rules of Court shall govern the promulgation of minute resolutions."^[6] A minute resolution would thus have sufficed for the denial of this third motion for reconsideration.

Wherefore, and there is an impress of finality to our resolution, the third motion for reconsideration is denied.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] L-30137, June 25, 1973, 51 SCRA 313.

[2] *Ibid*, 315-316.

[3] L-33156, July 25, 1973, 52 SCRA 154.

[4] *Ibid*, 158-159.

[5] 69 Phil. 602 (1940).

[6] Article X, Section 9 of the Constitution.

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.