

**JOSE V. BONAFE, PETITIONER, VS. HON. ROBERTO ZURBANO, ET AL.,
RESPONDENTS.***G.R. No. L-31753. July 31, 1984*

Ponente: PLANA, J.

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Some years back, petitioner, a policeman of Malilipot, Albay, was suspended by respondent Mayor Marciano Bitara because of four criminal cases filed against him in the Municipal Court of Tabaco, Albay, to wit: assault upon an agent (another policeman) of a person in authority with homicide; less serious physical injuries thru reckless imprudence; illegal possession of firearm; and alarm and scandal.

Before the cases could be tried on the merits, the prosecution moved for their provisional dismissal on account of the desistance of the offended parties who had been paid by petitioner. The motion was granted by the court. Petitioner later sought a modification of the provisional dismissal to an absolute dismissal, which was also granted by the court.

Petitioner then filed with the Civil Service Commission a petition for reinstatement and payment of the salaries he failed to receive during his suspension, invoking the second paragraph of Section 16, Republic Act No. 4864, otherwise known as the Police Act of 1966, which provides:

"When a member of the police force or agency is accused in court of any felony or violation of law x x x, the city mayor or municipal mayor concerned, shall immediately suspend the accused from office pending the final decision by the court, and in case of acquittal, the accused shall be entitled to immediate reinstatement and the payment of the entire salary he failed to receive during his suspension x x x." (Italics supplied.)

The Civil Service Commission referred the matter to the Malilipot Mayor, who replied with a firm expression of his refusal to reinstate petitioner for the reason that there was actually no acquittal which could be the basis of petitioner's reinstatement with back salaries. While the matter was pending in the Commission, petitioner filed an action for mandamus in the Court of First Instance of Albay to compel reinstatement and payment of back salaries. The court dismissed the action. Hence this petition seeking reversal of the said decision.

The petition has no merit. The law predicates reinstatement with entitlement to back salaries on "acquittal". The dismissal of the criminal cases filed against petitioner after he had paid the offended parties, without trial on the merits, was not an acquittal.

"It is obvious that when the statute speaks of the suspended officer being 'acquitted' it means that after due hearing and consideration of the evidence against him the court is of the opinion that his guilt has not been proved beyond reasonable doubt. Dismissal of the case against the suspended officer will not suffice because dismissal does not amount to acquittal. As aptly stated in *People vs. Salico*, 84 Phil. 722, 732-733 [1949]:

'Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of

competent jurisdiction or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case the defendant may again be prosecuted for the same offense before a court of competent jurisdiction.' " (Malanyaon vs. Lising, 106 SCRA 237 at 239.)

It is also noted that as regards the charge of assault upon an agent of a person in authority with homicide, the case was before the municipal court only for preliminary investigation. Certainly, the petitioner could not have been acquitted therein.

Apart from the foregoing, petitioner has failed to exhaust administrative remedies before seeking judicial relief. When he filed with the court a quo the case subject of the instant petition, his petition for reinstatement was pending in the Civil Service Commission, as it still is.

WHEREFORE, the petition is dismissed. SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

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