

PEDRO BATUNGBAKAL, PLAINTIFF AND APPELLEE, VS. NATIONAL DEVELOPMENT COMPANY AND MANUEL AGREGADO, AS AUDITOR GENERAL OF THE PHILIPPINES, DEFENDANTS AND APPELLANTS.

G. R. No. L-5127. May 27, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by the National Development Company (NDC) and Manuel Agregado as Auditor General of the Philippines from a decision of the Court of First Instance of Manila ordering the appellants to reinstate the plaintiff-appellee Pedro Batungbakal in his former position as property examiner in the Comptroller's office in the NDC, with a salary of P2,040 per annum, the compensation he was receiving when he was suspended on December 31, 1946, and further ordering that he be paid his back salary at the rate of P2,040 per annum from the date of his suspension up to the date of his reinstatement, deducting therefrom whatever amount he still owed the NDC. The appeal having been taken direct to this court, only questions of law may be raised and the finding of facts made by the trial court are binding on the parties and on this tribunal. The facts as found by the lower court may be briefly stated as follows.

On February 14, 1939, plaintiff Pedro Batungbakal was appointed by the Auditor General as cash and property examiner in the office of the Comptroller of the NDC. Shortly before the Pacific war the position of cash and property examiner was divided into two, namely, cash examiner and property examiner, Batungbakal retaining the position of property examiner. Around October of 1944 he went on leave.

When the NDC was reopened in March, 1945, Batungbakal and some other employees in the Comptroller's office were recalled to duty. The Comptroller was Under the supervision of the Auditor General but his salary and those of his personnel were paid by the NDC. Since the reorganization of the NDC it became the practice that only the Comptroller was appointed by the Auditor General with the approval of the Board of Directors of the Company while the personnel in his office were appointed by the company itself.

On August 24, 1945, Batungbakal was appointed by the Chairman of the Board of Directors and Acting General Manager of the NDC as property examiner in said company with a salary of P100 a month; he was promoted in salary to P2,040 a year effective April 1, 1946, in the same position of property examiner by appointment dated March 30, 1946, signed by the Acting General Manager of the NDC.

On December 31, 1946, Batungbakal was suspended from office as property examiner by the Investigating Committee created by Administrative Order No. 39 of the President of the Philippines, and on April 17, 1947, he received from the officer in charge of the NDC notice of his dismissal. Said notice reads as follows:

"Pursuant to the instruction of the Chief of the Executive Office, I have the honor to inform you that according to the report of the Investigation Committee which was created under Administrative Order No. 39 of His Excellency, the President of the Philippines, to investigate the business affairs and operations of the National Development Company, you have been found to have committed gross negligence in the performance of your

duties to the detriment of this Company. The said Committee likewise found that irregularities committed by you constitute acts and omissions which made possible the commission of irregularities in the disposal of yarns either in the names of fictitious buyers or through dummies, contrary to the policy of this Company;"

On May 28, 1947, Batungbakal filed a petition for reconsideration with the Office of the President; the matter was referred to Hon. Sixto de la Costa as Chairman of the Investigating Committee.

On December 4, 1948, the Investigating Committee of the NDC under the Chairmanship of Honorable De la Costa submitted to the President of the Philippines through the Secretary of Justice its report of the investigation which ends thus:

"In view of the foregoing, the committee reconsiders its previous findings, declaring that Batungbakal and de la Cruz have not committed negligence in the discharge of their duties, and therefore recommends their reinstatement to the service of the National Development Company."

On August 17, 1949, the Secretary of Justice forwarded the said report together with other pertinent papers to the Office of the President with the following recommendation:

"In view of the foregoing, the undersigned recommends that: (1) Mr. Pedro Batungbakal be reinstated with the warning that, as representative of the Comptroller, which included the auditing department, he was bound by the rules, regulations and instructions issued by the Management of the National Development Company and his failure hereafter to comply with these rules, regulations and instructions will be more severely dealt with; * * * 't' (Exhibit A)."

On September 5, 1949, the Office of the President of the Philippines referred the matter to the General Manager of the NDC through the Chairman of the Control Committee, Government Enterprise Council (GEC) for appropriate action.

On October 14, 1949, the Executive Vice-Chairman of the Control Committee of the GEC forwarded the papers to the General Manager of the NDC with the following statements:

"The Control Committee, GEC, hereby concurs in the views of the Secretary of Justice stated in the preceding second endorsement exonerating Messrs. Pedro Batungbakal and Sisenando de la Cruz of the charge of gross negligence in the performance of their duties since the evidence gathered by the Investigating Committee headed by Judge de la Costa shows that they did not know of the existence of the instructions contained in the memorandum order at the Management dated June 13, 1946 and the goods sold by the National Development Company were delivered to an authorized representative of the party to whom the goods were sold." (See Exhibit 2-A of respondent Auditor General.)

On October 27, 1949, the Technical Assistant (Legal, Credit and Collection) of the NDC wrote a letter to the Auditor General through the Auditor of the NDC, wherein after giving a brief statement of the case of Batungbakal including the findings and recommendation of the Investigation Committee and the recommendation of the Secretary of Justice for the reinstatement of Batungbakal, he requested the opinion of the Auditor General as to whether or not Batungbakal was entitled to his backpay from the date of his suspension to the date of his reinstatement. The Auditor of the NDC in his first indorsement to the Auditor General among other things said:

"Obviously, the reinstatement of Mr. Batungbakal in the Office of the Auditor of the National Development Company is no longer feasible, because there is no vacancy for the position of 'property examiner' formerly held by him. * * *

* * * * *

"However, in view of the recommendation of the Secretary of Justice in this case, this Office believes that no

objection may be interposed to the reinstatement of Mr. Batungbakal in the National Development provided that the same is not made to any position under the jurisdiction of the General Auditing Office.

* * * * *

"Accordingly, it is believed that Mr. Batungbakal is not entitled to any salary from the time of his suspension or dismissal to the date of his reinstatement, or appointment to a position different from that held by him when he was suspended and later dismissed from office."

On February 15, 1960, the Auditor General returned the papers of Batungbakal to the NDC with the following statement:

"In view of the foregoing circumstances surrounding the case of Mr. Pedro Batungbakal and the fact that his reinstatement to the position formerly held by him in that office is no longer feasible, this Office recommends that a new position be created in the National Development Company to which he may be reinstated, provided it will not be in the Auditing Department.

"With reference to his claim for salary, this Office will offer no objection to the payment thereof from the date of his suspension on December 31, 1946, to the date of his dismissal on April 17, 1947 (Exhibit 1-AG)."

On April 15, 1950, the Secretary of the Board of Directors of the NDC wrote to Batungbakal informing him that the Board of Directors of the NDC in its meeting of April 12, 1950, has authorized the payment of his salary during the period of his suspension from December 31, 1946 to the date of his dismissal on April 17, 1947, as recommended by the Auditor General, and that the Board likewise authorized his reappointment to any suitable position in the NDC. His backpay from December 31, 1946 up to April 17, 1947 amounting to P689 was applied to the partial payment of his indebtedness to the NDC in the sum of P1,392.42 (should be P1,394.42), leaving an unpaid balance of P705.42.

On August 15, 1950, the Acting Secretary of Economic Coordination replying to a letter of counsel for Batungbakal said that he approved the action taken by the Board of Directors of the NDC reiterating its previous resolution that it had no objection to the re-employment of Batungbakal to any suitable position in the NDC but stating however that it was not possible to re-employ him at that time because his former item was already occupied by someone else, and that there were no vacant items to which he could be appointed.

On October 2, 1950, Batungbakal wrote to the Chairman of the Board of Directors of the NDC, requesting his reinstatement in the service of the company and the payment to him of all his salary up to the date of his reinstatement. Acting upon this request the Board of Directors of the NDC in its meeting held October 8, 1950 authorized his reinstatement as previously approved by said Board on April 12, 1950 provided that "he renounce his right to claim for the payment of his back salary, and authorized the Acting General Manager to look for a suitable position for him in the National Shipyard & Graving Dock Department."

On November 4, 1950, Batungbakal through counsel informed the General Manager of the NDC that he declined to accept any position other than the one formerly occupied by him and requested that his back salary be paid to him as soon as possible.

In its meeting of November 8, 1950, the Board of Directors of the NDC approved Batungbakal's request for the payment of his salary amounting to P7,820 as of October 31, 1950, and appropriated the necessary sum therefor, subject to the final approval of the GEC and the Auditor General, provided Batungbakal relinquished his right to reinstatement in the service of the NDC.

On November 17, 1950, the Acting General Manager of the NDC wrote to the Secretary of Economic Coordination transmitting excerpts from the minutes of the meeting of the NDC held on November 8, 1950, for

his final approval, at the same time informing Batungbakal's counsel of his action.

In a memorandum to the Auditor General dated December 29, 1950, the Chief Law Officer, after discussing the facts of the case of Batungbakal stated his opinion that the action of the Board of Directors of the NDC authorizing the payment of back salaries to Batungbakal was legally justified for the reason that Batungbakal had not been suspended and dismissed for cause, and that as an employee of the NDC which is an agency of the Government he could not be removed except for cause. The Senior Attorney of the same office in another memorandum to the Auditor General on the same matter said that he had an interview with counsel of Batungbakal regarding the latter's claim for back salary, and made reference to efforts of the Auditor's office towards a compromise and stated his belief that the full back salary of Batungbakal could legally be paid by the Government because it covered a period of only three years, and that there was a precedent to support it, namely, that of Severo Yap, former Superintendent of the Bureau of Prisons who was paid his back salary for a period of about five years during his suspension, and he expressed his belief that the office may not insist on further compromise.

On February 7, 1951, the Auditor General by his 2nd indorsement returned to the Administrator of Economic Coordination the resolution adopted by the Board of Directors of the NDC on November 8, 1950, authorizing the payment to Batungbakal of the sum of P7,820 as back salary from December 31, 1946 to October 31, 1950 with the following comment and recommendation:

"This Office finds no specific provision of law under which payment to Mr. Batungbakal of the aforesaid amount of P7,820 may be authorized. The provisions of section 260 of the Revised Administrative Code which authorizes payment to a suspended employee of his full salary corresponding to the whole period of his suspension upon his exoneration or reinstatement may not be applied in the instant case because, as will be noted from the facts stated in the within letter of Mr. Batungbakal, dated October 2, 1950, he was not merely suspended from office but also dismissed from the service.

"In the case, however, of employees who were dismissed from the service by the Commissioner of Civil Service but subsequently exonerated upon appeal to the Civil Service Board of Appeals, it was ruled by the President as a matter of policy that payment of their salary for the period they were out of the service shall be discretionary on the part of the Department Head concerned. This ruling, it is believed, may be followed in the instant case.

"In view of the precarious financial condition of the National Development Company, the undersigned, pursuant to the aforesaid ruling, hereby authorizes the payment to Mr. Batungbakal of his salary corresponding only to the period from the date of his suspension on December 31, 1946 to December 31, 1947."

On April 12, 1950, the Administrator of Economic Coordination in his 3rd indorsement, returned said resolution to the General Manager of the NDC informing him that in view of the reasons stated in the preceding indorsement, his office had no objection to the payment of the salary of Batungbakal from December 31, 1946 to December 31, 1947.

On the basis of the facts above recited, Batungbakal apparently dissatisfied if not disgusted with the treatment accorded him, filed this case in the Court of First Instance of Manila against the NDC and Manuel Agregado as Auditor General with the following prayer:

"Wherefore, plaintiff prays this Honorable court:

"(a) In the first cause of action, to order the officer-in-charge of the defendant NDC to reinstate the plaintiff into the service without any condition or qualification whatsoever;

"(b) In the second cause of action, to order the Auditor General to approve the claim of the plaintiff for his

back salary from the time he was suspended on December 31, 1946 up to the time that he would be reinstated, and also to order the officer-in-charge of the NDC to pay the back salaries of plaintiff for the above-stated period at the rate of P2,040 per annum;

"(c) To order the defendants to pay the plaintiff the sum of five thousand pesos (P5,000) representing damages and attorney's fees and also to order the defendants to pay the costs of this suit; and

"(d) To grant the plaintiff all other just and equitable relief."

The defendants each filed an answer. Hearing was had on the preliminary issue raised by the Auditor General in his answer to the effect that the court had no jurisdiction to entertain plaintiff's cause of action against the Auditor General whose decisions are appealable only to the President of the Philippines or to the Supreme Court depending on whether the aggrieved party is a government officer or a private person, citing Article XI, section 3, of the Constitution, Commonwealth Act 327, and Rule 45 of the Rules of Court. The Auditor General further claimed that his right and duty to appoint personnel and to approve accounts was discretionary on his part and could not be limited or compelled by mandamus.

Ruling that the court had jurisdiction, it ordered the case to be tried on its merits. After trial the lower court presided by Judge Fidel Ibañez rendered the decision now appealed from as related at the beginning of this opinion.

To determine the right of plaintiff Batungbakal to reinstatement and to back salaries, it is necessary to ascertain his status as an employee. Although his salary was paid by the NDC, nevertheless, he was appointed by the Auditor General who under section 584 of the Administrative Code, is ex officio auditor of corporations like the NDC wherein the Government of the Philippines owns the majority stock. As such ex officio auditor, the Auditor General is authorized to appoint his representative in the said corporation as well as to appoint and fix the salary and the number of personnel to assist said representative in said work. Batungbakal was such employee in the office of the comptroller or auditor of the NDC, under the control of the Auditor General. Although after the reorganization of the NDC it became the practice for the NDC itself to appoint personnel in the office of the comptroller or company auditor, nevertheless, the practice cannot override or supplant the legal provisions of the law, much less affect the status of such personnel.

In an opinion rendered by the Secretary of Justice in his second indorsement of July 27, 1949, requested by the Auditor General, the said Secretary said that the auditor of Government controlled corporations referring to the Cebu Portland Cement Co. (which has the same status as the NDC as well as their subordinates are not corporate employees but agents of the Government and therefore they are embraced in the civil service. According to the Secretary of Justice this view was shared by the Commissioner of Civil Service himself.

Article XII, section 4, of the Constitution provides that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law." Section 694 of the Administrative Code has a similar provision. Interpreting these two laws, basic and statutory, we have held in the cases of *Lacson vs. Romero*,^[1] G.R. No. L-3081, 47 Off. Gaz., 1778 and *De los Santos vs. Mallari*^[2] G. R. No. L-3881, August 31, 1952, that a civil service official may not be removed from office except for cause. We have here a case of a civil service employee, suspended and later dismissed without cause as shown by the fact that after a reinvestigation he was exonerated and found guiltless of the charges of gross negligence filed against him, and was even recommended for reinstatement by the Government Committee that investigated him. In other words, his suspension and removal were illegal and in violation not only of the Administrative Code but of the Constitution itself. To remedy the evil and wrong committed, the least that could be done is to restore to him the office and post of which he had been illegally deprived, and to include in that remedy or redress payment of the salary which he

should have received during this period of illegal suspension and dismissal is far from unreasonable and unjust.

But the Auditor General contends that under the law which gives him the right to appoint the personnel in the office of the Comptroller of the NDC, he has full discretion to appoint or not to appoint any person in that office; that as Auditor General vested by the Constitution and section 584 of the Administrative Code with jurisdiction over the accounts of the Government including claims against it, he also has full discretion to grant or withhold back salaries corresponding to the period of suspension or dismissal of an employee appointed by him. It is also claimed that to reinstate Batungbakal to his former position would mean the removal without cause of the present incumbent. We cannot agree with the Auditor General. His theory and contention if accepted and followed would lead to an unfortunate and intolerable situation, incongruous with basic principles of justice and the constitutional protection of civil service employees against Government abuse and unjustified suspension or removal. Without reference to the present Auditor General, let us imagine in the future an arbitrary and wrong-minded Auditor General dismissing an employee from his office or in an office under his control, without cause, and later appointing another person to the same position. Such dismissed employee may establish to the satisfaction of the Government and the courts that he was innocent and was dismissed without reason or cause, and yet under the theory aforementioned, such dismissed employee is utterly helpless and without redress because his reinstatement and the payment of his back salary are wholly within the Auditor General's discretion which may not be controlled by mandamus, to say nothing of the fact that having already filled the position, there is no vacancy to which the dismissed employee may be re-appointed. The unreasonableness and fallacy of the theory and contention above-mentioned is patently revealed and brought home by the case just imagined.

When a citizen after due hearing establishes his right in court, said right is paramount and must be given force and effect. The way must be cleared for its enforcement, and technicalities in procedure, judicial as well as administrative, must give way.

Having proven that he (the plaintiff) had been suspended and dismissed without cause, contrary to the express provision of the Constitution, his reinstatement becomes a plain ministerial duty of the Auditor General, a duty whose performance may be controlled and enjoined by mandamus.[1] There is no room for discretion. The Auditor General is not being directed to perform an act which he may or may not execute according to his discretion. He is being asked and enjoined to redress a grievance, to right a wrong done. And the payment of the back salary is merely incidental to and follows reinstatement, this, aside from the parallel and analogy which may be found in section 260, paragraph 1, Revised Administrative Code which provides for the payment of back salary upon reinstatement.

It is further argued that Batungbakal not having appealed from the decision of the Auditor General denying his claim to reinstatement and payment of back salary, as provided by Article XI, section 3, of the Constitution, the Jones Law, section 255, Revised Administrative Code, Commonwealth Act No. 327, section 2 thereof, and Rule 45, of the Rules of Court, said decision has become final and conclusive upon the executive branches of the Government, and he may not resort to the courts. This same question was raised and decided in the case of *Ynchausti & Co. vs. Wright*, 47 Phil., 866, where it was held that the failure to appeal from the Auditor's decision does not affect claimant's right of redress in the Courts, and that although the Organic Act provides that the "decision of the Auditor shall be final and conclusive upon the executive branches of the Government," said Organic Act, does not provide that said decision shall be final and conclusive upon either the Legislature or the Judiciary.

As for the contention that for the Auditor General to reinstate the plaintiff would be tantamount to compelling him to dismiss without cause the present incumbent who was appointed after plaintiff's dismissal, suffice it to say that in so doing, neither injustice nor violation of law would be committed. Inasmuch as Batungbakal was illegally

suspended and dismissed, legally speaking, his position never became vacant, hence there was no vacancy to which the present incumbent could be permanently appointed. In other words, the present incumbent's occupancy of or tenure in said post is temporary and precarious and does not come within the contemplation of the constitutional prohibition. But, assuming for the moment that the incumbent's tenure were permanent and that said tenure fell under the protection of the Constitution, still, his being made to leave the post to give way to the plaintiff's superior right, may yet be considered as removal for cause, not unlike a case of quo warranto where a respondent incumbent is ousted by court order to give way to the successful party or petitioner.

The decision appealed from is affirmed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Bautista Angelo and Labrador, JJ., concur.

[1] 84 Phil. 740.

[2] 48 Off. Gaz. 1787; 87 Phil. 289.

[1] Ynchausti & Co. vs. Wright, 47 Phil., 866; Tan C. Tee & Co. vs. Wright, 53 Phil., 194.

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