

MARIO M. DE GUZMAN, PETITIONER, VS. CIVIL SERVICE COMMISSION, DEPARTMENT OF SCIENCE AND TECHNOLOGY AND PHILIPPINE NUCLEAR RESEARCH INSTITUTE, RESPONDENTS.

G.R. No. 101105. March 11, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court and Section 7, Article IX(a) of the 1987 Constitution, to review, reverse and set aside Resolution No. 787 of the Civil Service Commission dated January 7, 1991.

We grant the petition.

I

Petitioner, Mario De Guzman, was holding a permanent position as Science Research Assistant II at the Philippine Nuclear Research Institute (PNRI), an agency under the Department of Science and Technology (DOST). However, during the reorganization of respondent PNRI in December 1987, two of the eight positions for Science Research Assistant II were abolished. As a result, petitioner was offered the position of Science Research Assistant I. He refused the offer, claiming that his appointment to such position would be a demotion.

On March 4, 1988, petitioner received an official notice of termination effective April 15, 1988 from DOST Secretary Antonio Arizabal.

In a first endorsement dated August 13, 1989 of the DOST Reorganization Appeals Board, Dr. Ricardo M. Lantican, as Chairman, informed petitioner that he could be given preference for re-appointment over the other phased-out personnel, considering his "greater determination" to continue in the service at the PNRI.

On September 3, 1989, petitioner was reinstated to his former position as Science Research Assistant II, when one of the incumbents died.

On October 23, 1989, petitioner formally requested from respondent PNRI payment of back salaries from the time when his employment was terminated on April 16, 1988 to September 2, 1989, when he was reinstated to the position of Science Research Assistant II.

Respondent PNRI denied petitioner's request for payment of back salaries. Petitioner asked for a reconsideration, but the same was denied on May 22, 1990.

On July 2, 1990, petitioner appealed to respondent DOST the denial by respondent PNRI of his claim for the payment of back salaries. The DOST Reorganization Appeals Board denied petitioner's request.

On October 25, 1990, petitioner appealed to the Civil Service Commission (CSC) the denial of the DOST Reorganization Appeals Board of his request.

In a resolution dated January 7, 1991, respondent CSC ruled that petitioner was not entitled to back salaries because his original position was abolished during the reorganization of respondent PNRI in 1987 and that he refused his appointment to the position of Science Research Assistant I. The pertinent portion of said resolution reads as follows:

"It is clear from the above that his non-reappointment was from his own act or volition of refusing the position of Science Research Assistant I. Conformably, public service should not be made to suffer from his desistance to assume the position. Thus, his claim for back salaries covering the period April 16, 1988 to December 9, 1989 is not tenable" (Rollo, p. 49).

Petitioner asked for a reconsideration of said resolution, but it was denied.

Hence this petition.

II

In the case of Hon. Secretary Antonio V. Arizabal, Department of Science and Technology, The Director and the Members of the Philippine Nuclear Research Institute Reorganization Evaluation Committee, etc., v. Hon. Oscar L. Leviste, etc., et al., 186 SCRA 108 (1990), we nullified the reorganization of respondents DOST and PNRI and held that:

"An abolition which is not bona-fide but is merely a device to circumvent the constitutional security of tenure of civil service employees is null and void."

In said case, the petitioners Secretary of the DOST, principal respondent herein, and the Director and Members of the Reorganization Evaluation Committee of the PNRI asked for the annulment of the orders dated December 27, 1987 and January 15, 1988 of the Regional Trial Court, Branch 97, Quezon City which restrained them from dismissing the employees of the respondent PNRI and from implementing the reorganization scheme of said agency under Executive Order No. 128. We sustained the decision of the Regional Trial Court and dismissed the petition, holding:

"Except in cases of those who have retired or opted to be phased out and who have received their separation and retirement benefits, the petitioners are ordered to retain the private respondents - employees in the reorganized department under the new staffing pattern with positions and salaries comparable or equivalent to their former ranks and salaries."

The separation of petitioner, which resulted from a proscribed abolition of his office, is illegal while his appointment as Science Research Assistant I is an unauthorized demotion.

Demotion in office by assigning an employee to a lower position in the same service, which has a lower rate of compensation, is tantamount to removal if no cause is shown for it or if it is not part of any disciplinary action (*Floreza v. Ongpin*, 182 SCRA 692 [1990]).

Under Section 2 of Republic Act No. 6656, a victim of a removal in violation of the bona fide rule is entitled to reinstatement or re-appointment to the position from which he was removed.

When an official or employee was illegally dismissed and his reinstatement has later been ordered, for all legal purposes he is considered as not having left his office. Therefore, he is entitled to all the rights and privileges that accrue to him by virtue of the office he held (*Tanada v. Legaspi*, 13 SCRA 566 [1965]).

Back salaries may be ordered paid to said officer or employee (*City Mayor of Zamboanga v. Court of Appeals*, 182 SCRA 785 [1990]).

Petitioner is entitled to his full back salaries from April 16, 1988 to September 2, 1989 and to the difference between his salary as Science Research Assistant II and as Science Research Assistant I from September 2, 1989 up to the time he was appointed as Science Research Assistant II.

WHEREFORE, the petition is GRANTED.

SO ORDERED.

Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.

Narvasa, C.J., join J. Feliciano in his dissent.

Feliciano, J., dissent. I believe the abolition of his position in 1987 was valid for the reasons stated by Herrera, J. in the Mison and compassion cases.

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