

VIOLETA ALDOVINO, ALI ALIBASA, FELIX BALINO, DIONISIO BALLESTEROS, JOSE N. BALEIN, JR., FREDDIE CAUTON, JANE CORROS, ROBERTO CRUZ, TRINIDAD DACUMOS, ANGELITA DIMAPILIS, ANDREA E...

G.R. No. 102232. March 09, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ASSERTING that their plight is similar to petitioners' in *Mandani v. Gonzales*,^[1] and in the consolidated cases of *Abrogar v. Garrucho, Jr.*, and *Arnaldo v. Garrucho, Jr.*,^[2] herein petitioners and intervenors seek reinstatement and payment of back wages.

Section 29 of Executive Order No. 120, which took effect upon its approval on 30 January 1987, reorganizing the then Ministry of Tourism, provides that incumbents whose positions are not included in the new position structure and staffing pattern or who are not reappointed are deemed separated from the service. Pursuant thereto, the then Ministry of Tourism (MOT, now Department of Tourism, DOT) issued various office orders and memoranda declaring all positions thereat vacant,^[3] and effecting the separation of many of its employees,^[4] which led to the *Mandani*, *Abrogar* and *Arnaldo* cases, as well as the instant petition.

In *Mandani*, we declared null and void all office orders and memoranda issued pursuant to E.O. 120 and directed "public respondents or their successors x x x to immediately restore the petitioners to their positions without loss of seniority rights and with back salaries computed under the new staffing pattern from the dates of their invalid terminations at rates not lower than their former salaries."^[5]

In *Abrogar* and *Arnaldo*, we ordered the reinstatement of petitioners "to their former positions without loss of seniority rights and with back salaries computed under the new staffing pattern from the dates of their invalid dismissals at rates not lower than their former salaries, provided, however, that no supervening event shall have occurred which would otherwise disqualify them for such reinstatement, and provided, further, that whatever benefits they may have received from the Government by reason of their termination shall be reimbursed through reasonable salary deductions."^[6]

Herein petitioners and intervenors claiming that they should not be deprived of the relief granted to their former co-employees plead for reinstatement "without loss of seniority rights and with back salaries computed under the new staffing pattern from dates of their invalid termination at rates not lower than their former salaries."^[7]

Decisive in this recourse is the determination of whether the separation of herein petitioners and intervenors from service was pursuant to office orders and memoranda declared void in *Mandani*.

Except for petitioners Samuel Hipol, Jane Corros and Myrna Salvador, and intervenors Concepcion Timario, Efren Fontanilla, Ascension Padilla and Evelyn Enriquez, public respondents do not dispute that petitioners and intervenors were unseated from the then Ministry of Tourism, pursuant to office orders and memoranda issued

under E.O. No. 120. Public respondents nevertheless pray for the denial of the petition not only because petitioners and intervenors failed to exhaust administrative remedies and that their claims are barred by laches, but also in view of the disruption of the present organizational set-up if reinstatement is directed.

The Solicitor General argues that while petitioners and intervenors (except petitioners Samuel Hipol, Jane Corros and Efren Fontanilla) were dismissed contemporaneously with their colleagues in Mandani (filed 3 June 1987 and decided 4 June 1990), Abrogar (filed 31 October 1990 and decided 6 August 1991) and Arnaldo (filed 7 January 1991 and decided 6 August 1991), they filed this petition and the interventions only in October 1991, and February, March, May and July 1992, or more than four (4) years later, hence, laches has set in. In reply, petitioners and intervenors explain -

x x x since the time these DOT employees were illegally dismissed in May, 1987, most of them returned to the far away provinces of their origin because they became jobless. It was only by the slow and unreliable communication of word of mouth that they came to know much later on that they are (sic) entitled to be reinstated to the DOT x x x x[8]

The doctrine of laches is "principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in x x x the relation of parties." [9] In the case at bar, equity, if ever invoked, must lean in favor of petitioners and intervenors who were unjustly injured by public respondents' unlawful acts. The prejudice from the high-handed violation of the rights of petitioners and intervenors resulting in their loss of employment is far more serious than the inconvenience to public respondents in rectifying their own mistakes.

Moreover, petitioners and intervenors cannot be deemed to have slept on their rights considering, as we should, the following un rebutted allegations in the main petition:

7. Petitioners protested their illegal termination from the DOT. Many of them questioned their termination with the Department of Labor and Employment where they filed a Complaint against the DOT and its top officials for illegal dismissal x x x x Some of them questioned their illegal termination before the Civil Service Commission.

8. Many of petitioners joined a picket and demonstration held by illegally terminated employees of the DOT before its office at the DOT building at the Luneta Park.

9. Petitioners were forced to receive their separation or retirement benefits from the DOT, but all under protest. The others continued to fight their cases with the Department of Labor and Employment even if they got their separation and/or retirement benefits.

x x x x

11. After the finality of this Decision (Mandani) x x x x many other terminated employees of the DOT wrote to then DOT Secretary Peter D. Garrucho, Jr., as the successor-in-interest of former Sec. Jose U. Gonzalez, and DBM Secretary Guillermo Carague, asking that following the Decision in this Mandani vs. Gonzalez case and being similarly situated as the twenty-eight (28) petitioners therein, that they be reinstated to their former or equivalent positions in the DOT and/or to be paid their back wages. Then x x x DOT Secretary Garrucho and DBM Sec. Carague never responded to these letters and did not reinstate and/or pay any of their back wages.

x x x x

16. Following the Decision of this Honorable Court in the Mandani vs. Gonzalez case and its Resolution in the consolidated cases of Abrogar vs. Garrucho and Arnaldo vs. Garrucho, petitioners made representations with the DOT to be reinstated and/or paid their back wages x x x x[10]

Neither could petitioners and intervenors be faulted for not joining in the previous petitions because, as we held in

Cristobal v. Melchor (No. L-43203, 29 July 1977; 78 SCRA 175, 183, 187) -

More importantly, Cristobal could be expected- without necessarily spending time and money by going to court - to rely upon the outcome of the case filed by his co-employees to protect his interests considering the similarity of his situation to that of the plaintiffs therein and the identical relief being sought. On this point, We find a statement of Justice Louis Brandeis of the United States Supreme Court in *Southern Pacific vs. Bogert*, relevant and persuasive, and We quote:

The essence of laches is not merely lapse of time. It is essential that there be also acquiescence in the alleged wrong or lack of diligence in seeking a remedy. Here plaintiffs, or others representing them, protested * * * and ever since they have * * * persisted in the diligent pursuit of a remedy * * * Where the cause of action is of such a nature that a suit to enforce it would be brought on behalf, not only of the plaintiff, but of all persons similarly situated, it is not essential that each such person should intervene (sic) in the suit brought in order that he be deemed thereafter free from the laches which bars those who sleep on their rights (citations omitted).

x x x x

This Court, applying the principle of equity, need not be bound by the rigid application of the law, but rather its action should conform to the conditions or exigencies to a given problem or situation in order to grant a relief that will serve the ends of justice.

To paraphrase then Chief Justice John Edwin Marshall of the United States Supreme Court, let us to (do) complete justice and not do justice by halves ("The court of equity in all cases delights to do complete justice and not by halves." Marshall, C.J.-*Knight vs. Knight*, 3 P. Wms. 331, 334; *Corbet v. Johnson*, 1 Brock, 77, 81 - both cited in *Hefner, et al. vs. Northwestern Mutual Life Insurance Co.*, 123 U.S., 309, 313)."

We emphasize that prescription was never raised here as an issue; at most, it is deemed waived. In *Fernandez v. Grolier International, Inc.*, [11] we stated:

In the case of *Director of Lands v. Dano* (96 SCRA 161, 165), this Court held that 'inasmuch as petitioner had never pleaded the statute of limitations, he is deemed to have waived the same.'

In the cited case of *Director of Lands v. Dano*, the Director of Lands, who was similarly situated as public respondents herein who represent the Government, was deemed to have waived the defense of prescription "inasmuch as petitioner had never pleaded the statute of limitations."

The matter of prescription, we reiterate, may not be considered at this late stage, not only because it was never raised and therefore now foreclosed, but more importantly, because it must yield to the higher interest of justice. Incidentally, it is only in the dissent that the question of prescription is introduced. Not even the Government raised it.

In 1977, we in fact relaxed the rule on prescription in *Cristobal v. Melchor* [12] to give way to a determination of the case on the merits where, like in this case, "[i]t was an act of the government through its responsible officials x x x which contributed to the alleged delay in the filing of x x x complaint for reinstatement." But, we need not go back that far. On 15 August 1991, the Court En Banc granted the related petition in intervention of Alberto A. Peralta, et al., [13] in the consolidated cases of *Abrogar v. Garrucho*, and *Arnaldo v. Garrucho*, even if filed on 1 August 1991 or two months after the four-year prescriptive period, which lapsed on the 14th and 28th of May 1991. As we ruled in *Cristobal v. Melchor*, [14] "it is indeed the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so manifest wrong and injustice would result."

The principle that prescription does not run against the State, which contemplates a situation where a private party

cannot defeat the claim of the State by raising the defense of prescription, is inapplicable because in this case the private parties are the ones filing a suit against the State. Consequently, we reiterate our pronouncement in *Fernandez v. Grolier International, Inc.*,^[15] that "[i]t is true that there are exceptions to the rule that an action will not be declared to have prescribed if prescription is not expressly invoked (*Garcia vs. Mathis*, 100 SCRA 250). However, where considerations of substantial justice come in (as in this case when the very employment, and therefore the lifeblood, of each petitioner/intervenor is involved), it is better to resolve the issues on the basic merits of the case instead of applying the rule on prescription which the private respondent waived when it was not pleaded." Anyhow, it was public respondents who created the problem of petitioners and intervenors by illegally abolishing their positions and terminating their services in outrageous disregard of the basic protection accorded civil servants, hence our repeated pronouncement that it was unconstitutional.

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.^[16] Plainly, it was as if petitioners and intervenors were never served their termination orders and, consequently, were never separated from the service. The fact that they were not able to assume office and exercise their duties is attributable to the continuing refusal of public respondents to take them in unless they first obtained court orders, perhaps, for government budgetary and accounting purposes. Under the circumstances, the more prudent thing that public respondents could have done upon receipt of the decision in *Mandani*, if they were earnest in making amends and restoring petitioners and intervenors to their positions, was to inform the latter of the nullification of their termination orders and to return to work and resume their functions. After all, many of them were supposed to be waiting for instructions from the DOT because in their termination orders it promised to directly contact them by telephone, telegram or written notice as soon as funds for their separation would be available.^[17]

Furthermore, the representations to DOT made by petitioners and intervenors for their reinstatement partook of the nature of an administrative proceeding, and public respondents also failed to raise the issue of prescription therein. As already adverted to, that issue was never raised before us. In reciting the alleged instances of delay in bringing up this suit, the Solicitor General simply referred to laches, not prescription. Since this case is an original action, and if we treat the petition and interventions as ordinary complaints, the failure of public respondents to raise the issue of prescription in their comments cannot be interpreted any less than a waiver of that defense. For, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted.^[18]

Above all, what public respondents brought up was the doctrine of laches, not prescription; and laches is different from prescription. The defense of laches applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time, laches is not.^[19] In any case, it can be said that the prescriptive period was tolled with the filing of the termination cases before the Department of Labor and Employment and the Civil Service Commission, the pendency of which is acknowledged in the Comment and Memorandum of public respondents.

Incidentally, even the picketing of the premises and the placards demanding their immediate reinstatement could not be any less than written demands sufficient to interrupt the period of prescription. As we noted earlier, "[a]fter

the finality of this Decision (Mandani) x x x many other terminated employees of the DOT wrote to then DOT Secretary Peter D. Garrucho, Jr. x x x and DBM Secretary Guillermo Carague asking that following the Decision in this Mandani vs. Gonzales case and being similarly situated as the twenty-eight (28) petitioners therein x x x they be reinstated to their former or equivalent positions in the DOT and/or to be paid their back wages." But "[t]hen x x x DOT Secretary Garrucho and DBM Sec. Carague never responded to these letters,"[20] so that it may be said that the period that was interrupted never started to run again against petitioners and intervenors.

The requirement of prior resort to administrative remedies is not an absolute rule and this did not bar direct access to this Court in the analogous cases of *Dario v. Mison*,[21] and *Mandani v. Gonzales*,[22] thus -

The Court disregards the questions raised as to procedure, failure to exhaust administrative remedies, the standing of certain parties to sue (this was raised by the Civil Service Commission in G.R. No. 86241, and failure to exhaust administrative remedies was raised in G.R. Nos. 81954 and 81917 by the Solicitor General), and other technical objections, for two reasons, "(b)ecause of the demands of public interest, including the need for stability in the public service" (*Sarmiento III v. Mison*, G.R. No. 79974, December 17, 1987, 153 SCRA 549, 551-552) and because of the serious implications of these cases on the administration of the Philippine civil service and the rights of public servants.

On the argument that existing organizational set-up would be disrupted if reinstatement be directed, we need only reiterate our 18 October 1990 Resolution in *Mandani* that -

An erring head of a Department, Bureau, or Office cannot avoid reinstatement, payment of back pay, and other acts of compliance with the orders of this Court by interposing changes effected subsequent to his unlawful acts and claiming that such changes make it difficult to obey this Court's orders.

The basic principle to be applied whenever the Court declares an administrative official to have acted in an unlawful manner is for that official to undo the harmful effects of his illegal act and to accord to the aggrieved parties restoration or restitution in good faith to make up for the deprivations which may have been suffered because of his act.[23]

Petitioners and intervenors, who are similarly situated as their counterparts in *Mandani*, *Abrogar* and *Arnaldo*, deserve no less than equal treatment.

The Solicitor General takes exception to petitioner Samuel Hipol who was separated from the service under an order of 19 May 1986 issued pursuant to Sec. 2, Art. III, of Proclamation No. 3, and not under E. O. No. 120.[24] In reply, petitioner Hipol admits that he was "in the process of working for his reinstatement/reappointment at the DOT when x x x all positions thereat were declared vacant x x x"[25] Since his separation from service was not under void orders issued pursuant to E.O. No. 120 and, worse, he was not even an incumbent when E.O. No. 120 was issued, Hipol could not be considered as in the same situation as the petitioners in *Mandani*, *Abrogar* and *Arnaldo*.

A parallel case is that of intervenor Concepcion Timario who, according to the Solicitor General, resigned effective 28 May 1987 and was not separated under any of the invalid orders.[26] Intervenor Timario however contends that she is entitled to relief because her courtesy resignation was accepted on 9 June 1987 or during the period positions were declared vacant pursuant to MOT Office Order No. 9-87.[27] It is significant to note that Timario's letter of resignation cited "professional reasons" as cause for her abdication[28] which, obviously, pertains to the nature of her work. Moreover, conspicuously absent is the customary order requiring the filing of courtesy resignations. Timario may not be permitted to characterize, by way of self-serving assertions, that her resignation was merely a courtesy resignation pursuant to any of the voided office orders or memoranda.

The claim of the Solicitor General that petitioners Jane Corros and Efren Fontanilla were not employees of the Ministry of Tourism because their names did not appear in the regular plantilla of the Ministry of Tourism,[29] is specious since the listing of names in the plantilla is not a conclusive evidence of employment. Nonetheless, in view of the incessant allegation of the Solicitor General that Corros and Fontanilla were not employees of the Ministry, and considering the photocopies of Fontanilla's appointment papers and termination order submitted by him,[30] as well as the bare assertion of petitioner Corros that she was for 11 years PRO I in the Licensing Division of the Ministry and that her name could not be found in the plantilla because she is now Jane Ombawa in view of her marriage,[31] the fact of employment should be threshed out first in a proper forum as this Court is not a trier of facts.

The Solicitor General contends that since petitioner Myrna Salvador was a casual employee,[32] intervenor Ascension Padilla was a temporary appointee whose appointment expired 20 February 1987,[33] and intervenor Evelyn Enriquez was also a temporary appointee,[34] their appointments are terminable at the pleasure of the appointing authority. Considering however that the office orders and memoranda which directed the separation of petitioners and intervenors were annulled, hence in legal contemplation did not exist, the effect is, as if the terminations did not occur. However, since the determination in this case is limited only to the extent of the nullity of said orders and memoranda, the reinstatement of Salvador, Padilla and Enriquez cannot be ordered in the instant proceeding.

The Solicitor General also seeks dismissal of the petition and intervention against intervenors Rizalina T. Espiritu, Abdulia T. Landingin, Medardo Ila, Rosita Somera, Armando Cruz, Catalino Dabu, Francisco Villaraiz, Norma Jumilla, Kennedy Basa, Rolando G. Cagasca and Alfonso Angeles because they were already reinstated. However, because of the unrefuted allegation that these employees were not yet paid their respective back wages, then to that extent, their petitions must be granted.

In computing back wages, we cannot blindly accept the allegation of petitioners and intervenors that since their separation from the service in 1987, or about seven (7) years ago, they have been jobless hence entitled to full back wages. Conformably with existing jurisprudence, the award of back wages should not exceed a period of five (5) years.[35]

In the final analysis, the dissent admits that petitioners and intervenors truly deserve the reliefs they pray for except that their cause of action has allegedly prescribed. Shall we now frustrate their rightful claims on a ground that was never raised, nor even hinted at, by public respondents in the entire proceeding? That would be antithetic to our concept of social justice; at the very least, it is subversive of the rudiments of fairplay.

WHEREFORE, the instant petition is GRANTED. Petitioners Violeta Aldovino, Ali Alibasa, Felix Balino, Dionisio Ballesteros, Jose N. Balein, Jr., Freddie Cauton, Roberto Cruz, Trinidad Dacumos, Angelita Dimapilis, Andrea Estonilo, Mary Paz Frigillana, Manuel Henson, Merlene Ibalio, Magdalena Jamilla, Alexander Justiniani, Romulo Mirador, Julio Miravite, Dante Nagtalon, Clarita Namuco, Alicia Orbita, Angelita Pucan, Myrna P. Salvador, Librada Tantay, and Araceli De Veyra, and intervenors Josephine G. Andaya, Rosalinda T. Atienza, Jose M. Baldovino, Jr., Asuncion C. Briones, Maribelle A. Garcia, Florita O. Ocampo, Rolando Sison, Lourdes B. Tamayo, Rolando Valdez, Erlinda Piza, Eleonor Sagnit, Fidel Sevidal, Eloisa Alonzo, Angelito Dela Cruz, Lynie Arcenas, Maria Emma Jasmin, Macacuna Pangandaman, Rosalia Mauna, Romeo Padilla, Ascension Padilla, Crispulo Padilla, Virgilio Dejero, Armando Mendoza, Anicita S. Baluyut, Antonino D. Edralin, Evelyn A. Enriquez, Ma. Victoria L. Jacobo, Daniel M. Manamtam, Jessie C. Manrique, Encarnacion T. Radaza, Mario P. Ruivivar, Amor T. Medina and Felix L. Poliquit, are ordered REINSTATED immediately to their former positions without loss of seniority rights and with back salaries computed under the new staffing pattern from the dates of their invalid dismissals at rates not lower than their former salaries but not to exceed a period of five (5)

years, provided, however, that no supervening event shall have occurred which would otherwise disqualify them from such reinstatement, and provided, further, that whatever benefits they may have received from the Government by reason of their termination shall be reimbursed through reasonable salary deductions.

Public respondents are likewise ordered to pay intervenors Rizalina P. Espiritu, Abdulia T. Landingin, Medardo Ilao, Rosita Somera, Armando Cruz, Catalino Dabu, Francisco Villaraiz, Norma Jumilla, Kennedy Basa, Rolando G. Cagasca and Alfonso Angeles their back salaries similarly under the above-quoted conditions.

As regards petitioners Samuel Hipol, Jane Corros and Efren Fontanilla, their petition is DISMISSED, as well as the petition in intervention of Concepcion Timario.

SO ORDERED.

Padilla, Bidin, Romero, Nocon, Melo, Quiason, Vitug, and Kapunan, JJ., concur.

Narvasa, C.J., dissent on the same grounds I did in Mison (176 SCRA 84, 132) & Mandani (186 SCRA 108,156) Cruz, J., join J. Davide in his dissent.

Feliciano, J., dissent on same ground that I dissented in the Mison and Mandani cases with Herrera, J. I also join in the dissent of Davide, J.

Regalado, J., Pro hac vice.

Davide, Jr., J. dissenting opinion.

Puno, J., no part.

[1] G.R. No. 78525, 4 June 1990, and related cases; 186 SCRA 108.

[2] Resolution, G.R. No. 95773 & G.R. No. 96533, 6 August 1991.

[3] Office Order No. 9-87, 19 March 1987; Annex "A," Petition; Rollo, p. 20.

[4] Annexes "B" and "C," Petition; Rollo, pp. 21-22.

[5] See Note 1, at p. 155.

[6] See Note 2, at p. 5.

[7] Petition, p. 17; Rollo, p. 18.

[8] Rollo, p. 148; see also pp. 60-61, 155, 160, and 167.

[9] *Maneclang v. Baun*, No. L-27876, 22 April 1992; 208 SCRA 179, 193.

[10] Petition, pp. 7-11, Rollo, pp. 8-12; see also Memorandum of Petitioners and Intervenors, pp. 6-10; Rollo, pp. 226-230.

[11] G.R. No. 55312, 29 December 1987; 156 SCRA 830, 833.

[12] No. L-43203, 29 July 1977; 78 SCRA 175, 183.

[13] G.R. No. 95733, 15 August 1991: Rollo, p. 212.

[14] See Note 12, at 185, citing *Fogg vs. St. Louis, H & K. R. Co. (C.C.)* 17 Fed. 871, American Digest 1658 to 1896, Century Edition, Vol. 19, p. 462.

[15] See Note 11.

- [16] Norton v. Shellby, 118 U.S. 425, cited in Isagani Cruz, Philippine Political Law, 1987 ed., pp. 233-234.
- [17] Annex "C," Petition; Rollo, p. 22.
- [18] Sec. 2, Rule 9, Rules of Court.
- [19] Nielson & Co., Inc. v. Lepanto Consolidated Mining Co., No. L-21601, 17 December 1966, 18 SCRA 1040, citing 30 C.J.S. 522; Pomeroy's Equity Jurisprudence, Vol. 2, 5th ed., 177; See also Note 9.
- [20] Par. 11, Petition, pp. 8-9; Rollo, pp. 9-10.
- [21] G.R. No. 81954, 8 August 1989, and related cases; 176 SCRA 84, 108-109.
- [22] See Note 1, at pp. 138-139.
- [23] See Note 1; Rollo, p. 534-C.
- [24] Comment, pp. 6-7; Rollo, pp. 177-178; Memorandum, p. 9; Rollo, p. 201.
- [25] Reply to Comment, p. 2; Rollo, p. 59.
- [26] Comment (Re: Petition for Intervention), pp. 4-5; Rollo, pp. 103-104; Memorandum, pp. 11-12; Rollo, pp. 203-204.
- [27] Reply to Comment, p. 3; Rollo, p. 166.
- [28] Annex "9", Comment (Re: Petition for Intervention); Rollo, p. 118.
- [29] Citing certification of the Chief, Personnel Division, Department of Tourism, Comment, pp. 8-9; Rollo, pp. 179-180; Memorandum, p. 8; Rollo, p. 200.
- [30] Annexes "A" and "B", Reply to Comment; Rollo, pp. 65-66.
- [31] Reply to Comment, pp. 1-2; Rollo, pp. 58-59; and Memorandum, p. 1; Rollo, p. 221.
- [32] Comment, pp. 7-8; Rollo, pp. 178-179; Memorandum, pp. 7-8; Rollo, pp. 199-200.
- [33] Comment Re: Petition for Intervention, pp. 3-4; Rollo, pp. 102-103; Memorandum, p. 11; Rollo, p. 203.
- [34] Comment Re: Petition for Intervention, pp. 4-5; Rollo, pp. 130-131; Memorandum, pp. 12-13; Rollo, pp. 204-205.
- [35] Regis, Jr., v. Osmeña, Jr., G.R. No. 26785, 23 May 1991; 197 SCRA 308, 321, citing Cristobal v. Melchor, L-43202, 29 July 1977, 78 SCRA 175, 187; Balquidra v. CFI, L-40490, 28 October 1977, 80 SCRA 123; Laganapan v. Asedillo, L-28353, 30 September 1987, 154 SCRA 377, 387; Ginson v. Municipality of Murcia, L-46585, 8 February 1988, 158 SCRA 1, 8; Antiporda v. Ticao, L-30796, 15 April 1988, 160 SCRA 40, 42; San Luis v. Court of Appeals, G.R. No. 80160, 26 June 1989, 174 SCRA 258, 273.

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DISSENTING OPINION

DAVIDE, JR., J.:

I fully agree with the majority opinion that the separation from the service of petitioners and intervenors (save petitioners Samuel Hipol, Jane Corros, and Efren Fontanilla) was made pursuant to the office orders and memoranda declared void in *Mandani vs. Gonzales* (186 SCRA 108 [1990]). Said case and the subsequent consolidated cases of *Abrogar vs. Garrucho, Jr.* and *Arnaldo vs. Garrucho, Jr.* (G.R. Nos. 95773 and 96533, 6 August 1991) would have necessarily benefited petitioners and intervenors and made their reinstatement inevitable were it not for their failure to bring the action within the prescriptive period. It is on this point that I am constrained to disagree with the majority opinion.

I gather from the majority opinion that, as admitted by petitioners and intervenors, the illegal dismissal took place in May 1987. This petition was filed only in October 1991. The interventions were filed in February, April, May, and July, 1992 (Ponencia, 5, last paragraph) or more than four years after the cause of action had accrued. The petitions in *Mandani*, *Abrogar*, and *Arnaldo* were filed on 3 June 1987, 31 October 1990, and 7 January 1991, respectively, or all before the expiration of the four-year period. An illegal dismissal is an injury to a person's rights. Accordingly, pursuant to Article 1146 of the Civil Code, an action for reinstatement and back salaries must be filed within four years from the accrual of the cause of action or from the illegal dismissal. Since the instant petition and the interventions were filed long after the lapse of the four-year period, this Court is left with no other choice except to dismiss this case. The Office of the Solicitor General is correct on this point.

Another obstacle to this petition is that it is for *mandamus* (Petition, 2) which must be filed within one year after dismissal. In *Madrigal vs. Lecaroz* (191 SCRA 20, 25-26 [1990]), this Court, through Mr. Justice Leo Medialdea, held:

"The unbending jurisprudence in this jurisdiction is to the effect that a petition for *quo warranto* and *mandamus* affecting titles to public office must be filed within one (1) year from the date the petitioner is ousted from his position (*Galano, et al. v. Roxas*, G.R. No. L-31241, September 12, 1975, 67 SCRA 8; *Cornejo v. Secretary of Justice*, G.R. No. L-32818, June 28, 1974, 57 SCRA 663; *Sison v. Pangramuyen, et. et al.*, G.R. No. L-40295, July 31, 1978, 84 SCRA 364; *Cui v. Cui*, G.R. No. L-18727, August 31, 1964, 11 SCRA 755; *Villaluz v. Zaldivar*, G.R. No. L-22754, December 31, 1965, 15 SCRA 710; *Villegas v. De la Cruz*, G.R. No. L--23752, December 31, 1965, 15 SCRA 720; *De la Maza v. Ochave*, G.R. No. L-22336, May 23, 1967, 20 SCRA 142; *Alejo v. Marquez*, G.R. No. L-29053, February 27, 1971, 37 SCRA 762). The reason behind this ruling was expounded in the case of *Unabia v. City Mayor, et.*, 99 Phil. 253 where We said:

'x x x [W]e note that in actions of *quo warranto* involving right to an office, the action must be instituted within the period of one year. This has been the law in the island since 1901, the period having been originally fixed in Section 216 of the Code of Civil Procedure (Act No. 190). We find this provision to be an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. There must be stability in the service so that public business may (sic) be unduly retarded; delays in the statement of the right to positions in the service must be discouraged. The following considerations as to public officers, by Mr. Justice Bengzon, may well be applicable to employees in the civil service:

"Furthermore, constitutional rights may certainly be waived, and the inaction of the officer for one year could be validly considered as waiver, i.e., a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases.

And there is good justification for the limitation period; it is not proper that the title to public office should be

subjected to continued uncertainty (sic), and the peoples' interest requires that such right should be determined as speedily as practicable." (Tumulak vs. Egay, 46 Off. Gaz., [8], 3693, 3695.)

Further, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so. We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office."

The principle of equity which the majority opinion invokes is inapplicable. Equity is available only in the absence of positive law. As beautifully expressed by this Court through Mr. Justice Isagani A. Cruz in *Aguila vs. Court of First Instance of Batangas* (160 SCRA 352, 359-360 [1988]):

"For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said it in an earlier case [*Zabat Jr. vs. CA*, 142 SCRA 587], and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists -- and is now still reverently observed -- is *aequitas nunquam contravenit legis*."

In my view, petitioners and intervenors only desire to take advantage of our rulings in *Mandani*, *Abrogar*, and *Arnaldo*. Initially, they had no interest, or had lost any, in seeking judicial remedy after their dismissal. They really did not care much about their separation from the service. Otherwise, they would not have wasted precious time waiting for a herald to bring them good tidings. In short, they chose to sleep on their rights. The laws aid those who are vigilant, not those who sleep upon their rights.

To meet the above disquisition, the modified majority opinion now claims that since the defense of prescription was never raised by the respondents, it is deemed waived; and that the following un rebutted allegations in the main petition bring them within our ruling in *Cristobal vs. Melchor* (78 SCRA 175 [1977]):

"7. Petitioners protested their illegal termination from the DOT. Many of them questioned their termination with the Department of Labor and Employment where they filed a Complaint against the DOT and its top officials for illegal dismissal x x x Some of them questioned their illegal termination before the Civil Service Commission.

8. Many of petitioners joined a picket and demonstration held by illegally terminated employees of the DOT before its office at the DOT building at the Luneta Park.

9. Petitioners were forced to receive their separation or retirement benefits from the DOT, but all under protest. The others continued to fight their cases with the Department of Labor and Employment even if they got their separation and/or retirement benefits.

x x x

11. After the finality of this Decision (*Mandani*) x x x many other terminated employees of the DOT wrote to then DOT Secretary Peter D. Garrucho, Jr., as the successor-in-interest of former Sec. Jose U. Gonzalez, and DBM Secretary Guillermo Carague, asking that following the Decision in this *Mandani vs. Gonzalez* case and

being similarly situated as the twenty-eight (28) petitioners therein, that they be reinstated to their former or equivalent positions in the DOT and/or to be paid their back wages. Then x x x DOT Secretary Garrucho and DBM Sec. Carague never responded to these letters and did not reinstate and/or pay any of their back wages.

x x x

16. Following the Decision of this Honorable Court in the *Mandani vs. Gonzalez* case and its Resolution in the consolidated cases of *Abrogar vs. Garrucho* and *Arnaldo vs. Garrucho*, petitioners made representations with the DOT to be reinstated and/or paid their back wages x x x." (Ponencia, 6-7).

While it may be true that the public respondents, through the Office of the Solicitor General, did not raise the defense of prescription, it cannot be denied that the allegations in the petition clearly show that the petitioners' cause of action has indeed prescribed. In *Gulang vs. Nadayag* (214 SCRA 355, 362-363 [1992], citing *Philippine National Bank vs. Pacific Commission House* (27 SCRA 766 [1969]; *Garcia vs. Mathis* (100 SCRA 250 [1980]; and *Aznar III vs. Bernad* (161 SCRA 276 [1988])), we held:

"There is also authority to the effect that the defense of prescription is not deemed waived, even if not pleaded in a motion to dismiss or in the answer, if plaintiff's allegation in the complaint or the evidence he presents shows clearly that the action has prescribed."

Cristobal vs. Melchor has a very peculiar factual backdrop which justified an exception to the general rule. In the said case, this Court found the following:

"2. It was an act of the government through its responsible officials more particularly then Executive Secretary Amelito Mutuc and his successors which contributed to the alleged delay in the filing of *Cristobal's* present complaint for reinstatement.

The evidence of *Cristobal* establish the following: After the *Ingles* suit was filed in court, the dismissed employees, *Cristobal* included, continued to seek reconsideration of their dismissal. It was then that Executive Secretary Mutuc assured the employees that without prejudice to the continuation of the civil action, he would work for their reinstatement. Accordingly, some of the dismissed employees were recalled to their respective positions in the Office of the President among whom were the plaintiffs in the civil case and several others who were not parties therein. Secretary Mutuc even tried to place the others outside of the Malacañang Office. An affidavit of Emiliano Punzal, retired Presidential Records Officer, attests to the fact that Jose C. *Cristobal* 'was among those in the list of separated employees ordered for placement to a position commensurate to his qualification and experience.' In the meantime, however, Secretary Mutuc was replaced by other Executive Secretaries to whom *Cristobal* over and over again presented his request for reinstatement and who gave the same assurance that *Cristobal* would be recalled and re-employed at 'the opportune time'.

It was this continued promise of the government officials concerned which led *Cristobal* to bide his time and wait for the Office of the President to comply with its commitment. Furthermore, he had behind him the decision of the Supreme Court in *Ingles vs. Mutuc* which he believed should be applied in his favor. But when *Cristobal*, in answer to his various letters, received the letter of May 19, 1971 from the Office of the President denying his reinstatement and declaring the matter 'definitely closed' because of his failure to file an action in court within one year from his separation, it was only then that he saw the necessity of seeking redress from the courts."

In the instant case, the petitioners, as shown in the aforequoted paragraphs in their main petition, explicitly admit that they protested their illegal termination from the DOT; many of them questioned their termination with the Department of Labor and Employment (DOLE); and some of them questioned such illegal termination before the Civil Service Commission (CSC). Considering that they ultimately took this recourse after four years, it would be safe to presume that the decisions of the DOLE and the CSC were adverse to them; they took no further action

thereon, and allowed the decisions to become final. The petitioners then should not be permitted to belatedly re-litigate the matter by way of mandamus.

WHEREFORE, I vote to DENY the petition for want of merit.

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