

**FRANCISCO A. TAN, JR., PETITIONER, VS. OFFICE OF THE
PRESIDENT, RENATO C. CORONA, IN HIS CAPACITY AS ASSISTANT
SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT,
DEPARTMENT O...**

G.R. No. 110936. February 04, 1994

Ponente: Vitug, J.

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Vitug, J.:

The instant petition seeks to nullify the Resolution, dated 12 January 1993, of the Office of the President ("OP"), denying petitioner's partial motion for reconsideration of OP Resolution, dated 30 July 1990, which exonerated the petitioner of all charges in Ministry of Agriculture and Food (MAF) Administrative Case No. 278 and ordered his reinstatement to his former position. Invoking the "no work, no pay" rule, the Office of the President did not make any award for back salaries.

The petitioner, then Fisheries Regional Director under the then Ministry of Agriculture and Food, was dismissed from the service on 30 April 1986 pursuant to a decision of the Minister of Agriculture in MAF Administrative Case No. 278 which found him guilty of the offense of grave misconduct, oppression and violation of existing Civil Service laws.

From the order of the MAF, the petitioner appealed to the Civil Service Commission (CSC). The CSC, however, referred the case to the Office of the President since the petitioner was a Presidential appointee and a Career Executive Officer (CESO) with Rank IV.

On 30 July 1990, the Office of the President issued a Resolution, signed by then Executive Secretary Catalino Macaraeg, Jr., stating, in its dispositive portion, that -

"IN VIEW OF ALL THE FOREGOING, the Decision and Order of the Minister of Agriculture and Food respectively dated April 30, 1986 and August 29, 1986, are hereby SET ASIDE. Appellant Francisco A. Tan, Jr., is hereby EXONERATED of all the charges against him. Accordingly, the Department of Agriculture to which department the BFAR had been transferred, is hereby directed to reinstate Tan to his former or any equivalent position. Tan, however, is not entitled to payment of back salaries pursuant to the principle of 'no work, no pay.'" (p. 39, Rollo.)

The petitioner filed a partial motion for reconsideration, praying that he should likewise be granted back salaries.

In a Resolution, dated 12 January 1993, the Office of the President, through respondent Assistant Executive Secretary Renato C. Corona, denied petitioner's partial motion for reconsideration for lack of merit. (p. 47, Rollo.)

Hence, this petition for certiorari, prohibition and mandamus, alleging grave abuse of discretion on the part of the Office of the President and Renato C. Corona in denying the petitioner's claim for back salaries. The petitioner also named as respondents the Department of Agriculture, the Commission on Audit and Andres R. Menguito (the complainant in the administrative case).

The petition has merit.

In rejecting petitioner's claim, the Office of the President has relied on the fact that Section 42 of Presidential Decree No. 807 (Civil Service Law), unlike its counterpart in the old Civil Service Law, does not expressly provide for any payment of back salaries to government officials or employees who are found to have been illegally dismissed and ordered to be thereby reinstated to their former positions.

Section 42 of P.D. No. 807, however, is really not in point. The provision refers to preventive suspensions during the pendency of administrative investigations, and it does not cover dismissed civil servants who are ultimately exonerated and ordered reinstated to their former or equivalent positions. The rule in the latter instance, just as we have said starting with the case of *Cristobal vs. Melchor* (101 SCRA 857), is that when "a government official or employee in the classified civil service had been illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held." Such award of backwages, however, has since been limited to a maximum period of five (5) years (*San Luis vs. CA*, 174 SCRA 258).

In this instance, the Solicitor General himself has recommended the grant of the petition for similar reasons. In addition, he has made the following manifestation:

"Public respondents Department of Agriculture and Commission on Audit have expressed their concurrence to the recommendation of the Office of the Solicitor General. The Office of the President has likewise expressed no objection to the Solicitor General's recommendation."

WHEREFORE, the instant petition is hereby GRANTED as prayed for; however, the payment of back salaries shall be limited to a maximum of five (5) years. No costs. SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, and Puno, JJ., concur.

Nocon, J., on leave.

Kapunan, J., no part.

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