

MERLINDA JACINTO, ADELINA AGUSTIN, SUSAN AGUSTIN, EVELYN ATIENZA, NIDA BALANE, ANICIA CARLOS, CELEDONIA CARLOS, LIWANAG CASTILLO, JOSEFINA DE GUZMAN, MINERVA GARCIA, MARIA GATDU...

G.R. No. 124540. November 14, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

While we recognize and appreciate the toil and hardship of our public schoolteachers in fulfilling the state's responsibility of educating our children, and realize their inadequately addressed plight as compared to other professionals, we have the equal task of promoting the larger public interest which withholds from them and other similarly situated government workers the right to engage in mass actions resulting in work stoppages for any purpose. Although the Constitution vests in them the right to organize, to assemble peaceably and to petition the government for a redress of grievances, there is no like express provision granting them the right to strike. Rather, the constitutional grant of the right to strike is restrained by the proviso that its exercise shall be done in accordance with law.

The Case

Before us is a petition for review under Rule 45 of the Rules of Court seeking to set aside the November 27, 1995 Decision[1] of the Court of Appeals[2] in CA-G.R. SP No. 37596, which found no grave abuse of discretion on the part of the Civil Service Commission (CSC) in issuing its resolutions[3] disposing of the separate appeals and motions for reconsideration of herein petitioners. The dispositive portions of most of the CSC resolutions, with the exception of the name of the appellant concerned, uniformly read:

“WHEREFORE, foregoing premises considered, the Commission hereby resolves to find Susan Agustin guilty of Conduct Prejudicial to the Best Interest of the Service. She is meted out the penalty of six (6) months suspension without pay. Agustin is now automatically reinstated in the service without payment of back salaries.”[4]

As regards Petitioner Merlinda Jacinto, the decretal portion of the resolution pertaining to her case reads:

“WHEREFORE, foregoing premises considered, the Commission hereby resolves to find Merlinda Jacinto guilty of Violation of Reasonable Office Rules and Regulations. She is hereby meted out the penalty of reprimand. She is automatically reinstated in the service without payment of back salaries.”[5]

In a Resolution[6] dated March 29, 1996, Respondent Court of Appeals denied the petitioners' motion for reconsideration.

The Facts

The following are the antecedents of the case as narrated by the Court of Appeals, which we find substantiated by

the records:

“Petitioners are public school teachers from various schools in Metropolitan Manila. Between the period September 17 to 21, 1990, they incurred unauthorized absences in connection with the mass actions then staged; and on September 17, 1990, DECS Secretary Isidro Cariño immediately issued a return-to-work order worded as follows:

‘TO: ALL PUBLIC SCHOOL TEACHERS AND OTHER DECS PERSONNELS
SUBJECT: RETURN TO WORK ORDER

Under Civil service law and rules, strikes, unauthorized mass leaves and other forms of mass actions by civil servants which disrupt public services are strictly prohibited.

Those of you who are engaged in the above-mentioned prohibited acts are therefore ordered, in the interest of public service, to return to work within 24 hours from your walkout otherwise dismissal proceedings shall be instituted against you.’ (Underscoring supplied).

The directive was ignored by petitioners. Consequently, on separate dates, Secretary Cariño issued formal charges and preventive suspension orders against them. They were administratively charged with gross misconduct; gross neglect of duty, etc. for joining unauthorized mass actions; ignoring report-to-work directives; unjustified abandonment of teaching posts; non-observance of Civil Service law, rules and regulations; non-compliance with reasonable office rules and regulations; and incurring unauthorized absences without leave, etc. An investigation committee was then created by Sec. Cariño to look into the matter. However, during the investigation, petitioners did not file their answers or controvert the charges against them. As a consequence, Sec. Cariño, in his decisions found them guilty as charged and imposed the penalty of dismissal, except with respect to petitioners Merlinda Jacinto and Adelina Agustin who were meted only six (6) months suspension.

The decisions were appealed to the Merit Systems Protection Board (MSPB) which dismissed the appeals for lack of merit and then to the Civil Service Commission which set aside the Orders of the MSPB in the contested resolutions. The Civil Service Commission, in separate resolutions, found the petitioners (except Merlinda Jacinto) guilty of Conduct Prejudicial to the Best Interest of the Service; imposed upon them the penalty of six (6) months suspension without pay; and automatically reinstated them to the service without payment of back salaries x x x. In the case of Petitioner Merlinda Jacinto, the CSC found her guilty of Violation of Reasonable Office Rules and Regulations; imposed upon her the penalty of reprimand; and automatically reinstated her in the service without payment of back salaries x x x.

Acting on the motions for reconsideration, the CSC rendered the assailed resolutions denying the motions for lack of merit.”[7]

Petitioners initially questioned the CSC resolutions directly before this Court in petitions docketed as G.R. Nos. 118252 to 118271. In accordance with Revised Administrative Circular 1-95, we referred them to the Court of Appeals.

Respondent Court found that the “petitioners absented themselves from their classes in furtherance of or in connection with the ‘mass action’ for the purpose of pressuring the government to grant their demands.” Citing the resolution of this Court in *MPSTA vs. Laguio*[8] that the mass actions staged by the public schoolteachers from September 17 to September 19, 1990, were “to all intents and purposes a strike,” it denied the petition, since the right to strike did not extend to civil service employees. In the case of Merlinda Jacinto, Respondent Court found no error on the part of the CSC in finding her guilty of violation of reasonable office rules and regulations. Neither did it find the petitioners entitled to backwages for the period of their preventive suspension, as they were “not exonerated of the charges against them.”

Hence, this petition.[9]

Issues

Petitioners raise the following grounds for their appeal:

“I. The Respondent Court of Appeals committed grave abuse of discretion when it upheld the resolutions of the Civil Service Commission that penalized all the petitioners whose only ‘offense’ (except Jacinto) was to exercise their constitutional right peaceably to assemble and petition the government for redress of grievances.

“II. The Respondent Court of Appeals committed grave abuse of discretion when it upheld the resolutions of the Civil Service Commission that penalized Petitioner Jacinto for an alleged offense which has no basis whatsoever thereby violating her right to security of tenure.

“III. The Respondent Court of Appeals committed grave abuse of discretion when it upheld the resolutions of the Civil Service Commission that denied petitioners their right to backwages covering the period when they were illegally not allowed to teach.”[10]

Preliminarily, we note that the remedy resorted to by petitioners is a petition for review under Rule 45 of the Rules of Court which, however, allows “only questions of law.”[11] Jurisprudence has extended this remedy to questions of fact in exceptional cases.[12] Where the issues raised involve lack of jurisdiction or grave abuse of discretion as in this case, the Rules provide for a different remedy -- Rule 65. In the interest of substantial justice, however, we hereby decide to deal with this petition as one filed under Rule 45, as denominated in its prefatory paragraph, and treat the “grave abuse of discretion” on the part of Respondent Court of Appeals as allegations of “reversible errors.”

The Court’s Ruling

The petition, which fails to convince us, merits only dismissal.

First Issue: Improper Exercise of the Right to Peaceful Assembly and to Petition for a Redress of Grievances

There is no question as to the petitioners’ rights to peaceful assembly to petition the government for a redress of grievances and, for that matter, to organize or form associations for purposes not contrary to law, as well as to engage in peaceful concerted activities. These rights are guaranteed by no less than the Constitution, particularly Sections 4[13] and 8[14] of the Bill of Rights, Section 2(5)[15] of Article IX, and Section 3[16] of Article XIII. Jurisprudence abounds with hallowed pronouncements defending and promoting the people’s exercise of these rights. As early as the onset of this century, this Court, in *U.S. vs. Apurado*,[17] already upheld the right to assembly and petition and even went as far as to acknowledge:

“It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.”[18]

Primicias vs. Fugoso[19] further sustained the supremacy of the freedoms of speech and of assembly over comfort and convenience in the use of streets or parks. Although the Court opined that the exercise of the rights of free speech and of peaceful assembly to petition the government for redress of grievances “is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society,” regulation was limited to the mayor’s reasonable discretion in issuing a permit to determine or specify only the streets or public places to be used for the purpose and to provide adequate and proper policing to minimize the risk of disorder. Quoting Justice Brandeis in his concurring opinion in *Whitney vs. California*, the Court said:[20]

“Fear of serious injury cannot alone justify suppression of free speech and assembly. x x x To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one x x x.

x x x x x x x x

x x x The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state. x x x”

This limitation was strictly applied in *Reyes vs. Bagatsing*,[21] in which “the Court [was] called upon to protect the exercise of the cognate rights to free speech and peaceful assembly, arising from the denial of a permit.” In that case, retired Justice J.B.L. Reyes, on behalf of the Anti-Bases Coalition, sought a permit from the mayor of Manila to hold a march and a rally starting from Luneta, proceeding through Roxas Boulevard to the gates of the U.S. Embassy, to be attended by local and foreign participants to the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases. The Manila mayor denied them the permit “due to police intelligence reports which strongly militate against the advisability of issuing such permit at this time and at the place applied for.” In reversing the mayor, this Court stated that to justify limitations on freedom of assembly, there must be proof of sufficient weight to satisfy the “clear and present danger”[22] test. Thereafter, the Court proceeded to summarize the rules on assembly and petition,[23] making the clear-and-present danger rule the standard for refusing or modifying the grant of a permit. But it stressed that “the presumption must be to incline the weight of the scales of justice on the side of such rights [of free speech and peaceable assembly], enjoying as they do precedence and primacy.”

Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc.,[24] which was promulgated after the proclamation of martial law, further underscored the supremacy of these basic constitutional rights, this time over property rights. Speaking through Mr. Justice Makasiar, the Court explained:

“x x x the primacy of human rights -- freedom of expression, of peaceful assembly and of petition for redress of grievances -- over property rights has been sustained. Emphatic reiteration of this basic tenet as a coveted boon -- at once the shield and armor of the dignity and worth of the human personality, the all-consuming ideal of our enlightened civilization -- becomes [o]ur duty, if freedom and social justice have any meaning at all for him who toils so that capital can produce economic goods that can generate happiness for all. To regard the demonstration against police officers, not against the employer, as evidence of bad faith in collective bargaining and hence a violation of the collective bargaining agreement and a cause for the dismissal from employment of the demonstrating employees, stretches unduly the compass of the collective bargaining agreement, is ‘a potent means of inhibiting speech’ and therefore inflicts a moral as well as mortal wound on the constitutional guarantees of free expression, of peaceful assembly and of petition.”[25]

Specifically, the right of civil servants to organize themselves was positively recognized in *Association of Court of Appeals Employees (ACAE) vs. Ferrer-Calleja*. [26] But, as in the exercise of the rights of free expression and

of assembly, there are standards for allowable limitations such as the legitimacy of the purposes of the association,[27] the overriding considerations of national security and the preservation of democratic institutions.[28]

As regards the right to strike, the Constitution itself qualifies its exercise with the proviso “in accordance with law.” This is a clear manifestation that the state may, by law, regulate the use of this right, or even deny certain sectors such right. Executive Order 180[29] which provides guidelines for the exercise of the right of government workers to organize, for instance, implicitly endorsed an earlier CSC circular which “enjoins under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walkouts and other forms of mass action which will result in temporary stoppage or disruption of public service,”[30] by stating that the Civil Service law and rules governing concerted activities and strikes in the government service shall be observed.[31]

It is also settled in jurisprudence that, in general, workers in the public sector do not enjoy the right to strike. *Alliance of Government Workers vs. Minister of Labor and Employment*[32] rationalized the proscription thus:

“The general rule in the past and up to the present is that the ‘terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law.’ x x x. Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by the workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.”[33]

After delving into the intent of the framers of the Constitution, the Court affirmed the above rule in *Social Security System Employees Association (SSSEA) vs. Court of Appeals*[34] and explained:

“Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action. But employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, to pressure the Government to accede to their demands. As now provided under Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, which took effect after the instant dispute arose, ‘[t]he terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law and employees therein shall not strike for the purpose of securing changes [thereto].’”[35]

We now come to the case before us. Petitioners, who are public schoolteachers and thus government employees, do not seek to establish that they have a right to strike. Rather, they tenaciously insist that their absences during certain dates in September 1990 were a valid exercise of their constitutional right to engage in peaceful assembly to petition the government for a redress of grievances. They claim that their gathering was not a strike; therefore, their participation therein did not constitute any offense. *MPSTA vs. Laguio*[36] and *ACT vs. Cariño*,[37] in which this Court declared that “these ‘mass actions’ were to all intents and purposes a strike; they constituted a

concerted and unauthorized stoppage of, or absence from, work which it was the teachers' duty to perform, undertaken for essentially economic reasons," should not principally resolve the present case, as the underlying facts are allegedly not identical.

Strike, as defined by law, means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.[38] A labor dispute includes any controversy or matter concerning terms and conditions of employment; or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employers and employees.[39] With these premises, we now evaluate the circumstances of the instant petition.

It cannot be denied that the mass action or assembly staged by the petitioners resulted in the non-holding of classes in several public schools during the corresponding period. Petitioners do not dispute that the grievances for which they sought redress concerned the alleged failure of public authorities -- essentially, their "employers" -- to fully and justly implement certain laws and measures intended to benefit them materially, such as:

"1. Immediate release of P680 million Secondary Education Fund (SEF) fringe benefits of teachers under Section 17 of Republic Act 6758.

2. Clothing allowance at P500 to P1,000 per teachers [sic] under the General Appropriations Act of 1990

3. DMB Circular 904

4. Increase in minimum wage to P5,000 for teachers."[40]

And probably to clothe their action with permissible character,[41] they also raised national issues such as the removal of the U.S. bases and the repudiation of foreign debt. In *Balingasan vs. Court of Appeals*,[42] however, this Court said that the fact that the conventional term "strike" was not used by the participants to describe their common course of action was insignificant, since the substance of the situation, and not its appearance, was deemed controlling.[43]

Moreover, the petitioners here, except Merlinda Jacinto, were not penalized for the exercise of their right to assemble peacefully and to petition the government for a redress of grievances. Rather, the Civil Service Commission found them guilty of conduct prejudicial to the best interest of the service for having absented themselves without proper authority, from their schools during regular school days, in order to participate in the mass protest, their absence ineluctably resulting in the non-holding of classes and in the deprivation of students of education, for which they were responsible. Had petitioners availed themselves of their free time -- recess, after classes, weekends or holidays -- to dramatize their grievances and to dialogue with the proper authorities within the bounds of law, no one -- not the DECS, the CSC or even this Court -- could have held them liable for the valid exercise of their constitutionally guaranteed rights. As it was, the temporary stoppage of classes resulting from their activity necessarily disrupted public services, the very evil sought to be forestalled by the prohibition against strikes by government workers. Their act by its nature was enjoined by the Civil Service law, rules and regulations, for which they must, therefore, be made answerable.

Second Issue: Violation by Petitioner Jacinto of Reasonable Office Rules and Regulations

Petitioner Jacinto, for her part, pleads for exoneration. She asks the Court to reexamine and give due weight to the certification[44] issued by her school principal that she met her class on September 20, 1990 but failed to sign in the attendance logbook. Stated otherwise, Jacinto wants us to scrutinize firsthand a document already ruled upon by the Civil Service Commission and the Court of Appeals to be of doubtful credibility. Time and again, we have

held that findings of administrative agencies, which have acquired expertise because their jurisdiction is confined to specific matters, are accorded not only respect but even finality^[45] particularly when affirmed by the appellate tribunal. It is not a function of this Court to examine and evaluate the probative value of the evidence proffered in the concerned forum, which formed the basis of the latter's impugned decision, resolution or order,^[46] absent a clear showing of arbitrariness and want of any rational basis therefor.^[47] In the instant case, we find no sufficient reason to reverse the findings of the CSC.

In any event, as observed by the Commission, said certification, dated December 19, 1990, was belatedly submitted by Petitioner Jacinto only with her motion for reconsideration of the CSC resolution promulgated September 21, 1993; thus it was correctly rejected as a newly discovered evidence. Additionally, the Commission explained:

“x x x such certification contradicts the allegation that she filed an application for leave. If she was really present on September 20, 1990, there would have been no need for her to file an application for leave. Apparently, this is a vain effort to present documents of doubtful credibility just to have Jacinto exonerated of the charges against her.”^[48]

The futility of the tactics of Petitioner Jacinto to evade culpability is further exemplified by her contradictory assertions. In a sworn explanation submitted to Secretary Cariño, she claimed that she left the school premises on the day in question, because she “was emotionally and mentally depressed,” and went to see a physician.^[49] In her motion for reconsideration before the CSC, she submitted the above certification to the effect that she was not absent. Now, in assailing the Commission's decision to reprimand her for violation of reasonable office rules and regulations in not filing an application for leave of absence, she invokes Sec. 15, Rule XVI of the Civil Service rules, which provides:

“Sec. 15. Applications for vacation leave of absence for one full day or more shall be submitted on the prescribed form for action by the proper chief of agency in advance, whenever possible, of the effective date of such leave.”

She contends that the filing of an application for vacation leave need not always be in advance of the effective date thereof.^[50] Clearly, her present stance is diametric to her “illness” justification before the DECS. In the latter case, it is Section 16 of said rules that is pertinent:

“Sec. 16. All applications for sick leaves of absence for one full day or more shall be on the prescribed form and shall be filed immediately upon the employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the office head. x x x”

The regulation requires (1) the filing of the application for sick leave on the prescribed form immediately upon the employee's return from such leave and (2) a notice of absence to be sent to the immediate supervisor and/or office head. But the Commission found that “the records are bereft of any showing that Jacinto asked permission from school authorities to go out of school premises and seek medical attention outside nor did she file an application for sick leave x x x.”^[51] Hence, its conclusion that petitioner violated reasonable office rules and regulations.

The totality of the evidence on record sustains the findings and conclusions of the Commission, as affirmed by the Court of Appeals. We have no reason to reverse them. The Civil Service rules clearly provide that violation of reasonable office rules and regulations, on first offense, carries the penalty of reprimand.^[52]

Third Issue: No Right to Backwages

Petitioners anchor their claim for backwages on the supposed illegality of (1) their preventive suspension upon the

filing of the charges against them and (2) the immediate execution of the DECS Secretary's decisions ordering their dismissal.

The charges against petitioners consisted of the following: (1) grave misconduct; (2) gross neglect of duty; (3) gross violation of Civil Service law, rules and regulations and reasonable office regulations; (4) refusal to perform official duty; (5) gross insubordination; (6) conduct prejudicial to the best interest of the service; and (7) absence without approved leave. These were based on their alleged unauthorized participation in the mass actions in September 1990, disregard of report-to-work directives, unjustified abandonment of teaching posts, unauthorized absences without leave, and other similar violations reported to the DECS Secretary by their respective school supervisors.[53]

We find that the charges filed against petitioners warranted their preventive suspension from the service, as provided under Section 51, Chapter 7 (on Discipline) of the Administrative Code, which reads:

“Sec. 51. Preventive Suspension. -- The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.”

The petitioners' alleged lapses, initially found substantiated by the DECS, qualify as grave misconduct or neglect in the performance of duty under the above rule. Thus, former Education Secretary Cariño had the legal authority to suspend them pending further investigation.

The Secretary's immediate execution of his decisions imposing the penalty of dismissal finds legal basis in Sec. 47 (2) of the Civil Service law[54] which provides:

“Sec. 47. Disciplinary Jurisdiction. -- x x x.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.”

As can be gleaned from the above, the department secretary's decision confirming the removal of an officer or employee under his jurisdiction is executory in character, i.e. such decision may be immediately executed even pending further remedy, such as an appeal,[55] by the dismissed officer or employee. In the case at bar, it was already the final judgments of Secretary Cariño which were forthwith carried out. The aforementioned statutory provision rules out the alleged illegality of the actions of the DECS Secretary.

In any event, the rule is settled that backwages may be granted only to those who have been illegally dismissed and thenceforth ordered reinstated, or to those acquitted of the charge against them.[56] Even a pardoned convicted employee is not automatically entitled to backpay. *Monsanto vs. Factoran Jr.*[57] established the general rule that -- while pardon has been commonly regarded as eliminating the existence of guilt so that in the eyes of the law the offender is as innocent as though he never committed the offense -- such exoneration does not operate for all purposes. It does not erase the fact of the commission of the offense and the conviction therefor. It frees the convict from all penalties and legal disabilities and restores to him all his civil rights; but unless

expressly grounded on the person's innocence, it does not ipso facto restore him to public office necessarily relinquished or forfeited by reason of the conviction. Pardon does not generally result in automatic reinstatement because the offender has to apply for reappointment; neither is he entitled to backpay.[58]

Thus, in *Sabello vs. DECS*,[59] although we reinstated the petitioner-pardonee to his previous position in the interest of "justice and equity," we did not grant him backwages since he "was lawfully separated from the government service upon his conviction for an offense." We reiterated that the right to backwages was afforded only to those who were illegally dismissed but thereafter ordered reinstated, or to those otherwise acquitted of the charge against them.

Again, in *City Mayor of Zamboanga vs. Court of Appeals*,[60] we said that "back salaries may be ordered paid to an officer or employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal." Hence, in *Garcia vs. Chairman, Commission on Audit*,[61] we said that "if the pardon is based on the innocence of the individual, it affirms this innocence and makes him a new man and as innocent as if he had not been found guilty of the offense charged." [62] In that case, Garcia was found administratively liable for dishonesty. He was, however, acquitted by the trial court of the complaint for qualified theft based on the very same acts. The acquittal was founded not on lack of proof beyond reasonable doubt but on the fact that he did not commit the offense imputed to him. This Court said that after having been declared innocent of the criminal complaint, which had the same basis as the administrative charge, for all legal purposes the petitioner should not be considered to have left his office, so that he was entitled to all the rights and privileges that accrued to him by virtue of the office held, including backwages. He was restored to his office ipso facto upon the issuance of the clemency. The grant of backwages was justified "to afford relief to [the] petitioner who [was] innocent from the start and to make reparation for what he [had] suffered as a result of his unjust dismissal from the service." [63]

However, in *Balingasan*, finding that petitioners therein indeed participated in the unlawful mass actions for which they were similarly meted suspension, the Court opined that they were not completely exonerated of the charges against them. They were denied back salaries because they had given ground for their suspension. This means that being found liable for a lesser offense is not equivalent to exoneration from the original complaint against the concerned public officer or employee. *Balingasan* referred to the earlier case of *Yacia vs. City of Baguio*,[64] in which this Court denied the claim of an employee for backwages for the period during which he was not allowed to work because of the execution of the CSC decision dismissing him for dishonesty, even though, on appeal, his penalty was reduced to a fine equivalent to six months' pay.

Based on the above premises, petitioners' demand for backwages cannot be granted, for they had given cause for their suspension -- their unjustified abandonment of classes to the prejudice of their students. Although they were eventually found guilty only of conduct prejudicial to the best interest of the service, and not grave misconduct or other offense warranting their dismissal from the service, they were not fully innocent of the charges against them.

We find the case of *Petitioner Jacinto* different, however. The Civil Service Commission found her culpable only of violation of reasonable office rules and regulations, for not having asked permission from school authorities to leave the school premises and seek medical attention and for not filing an application for sick leave for approval by the school authorities. There was no proof that she joined the mass actions which caused prejudice to the school system. In *Balingasan*, this Court, after finding that *Rodolfo Mariano* was not involved in the mass actions but was absent because he attended the wake and burial of his grandmother in Ilocos Sur without however the benefit of an approved leave of absence, held that "[t]o deny petitioner Mariano his back wages during his suspension would be tantamount to punishing him after his exoneration from the charges which caused his dismissal from the service," i.e. participation in the unlawful mass actions. Therefore, in line with *Balingasan*, we

likewise grant back salaries to Petitioner Jacinto who did not join the illegal activity.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED and the assailed Decision of the Court of Appeals is hereby AFFIRMED with the modification that Petitioner Merlinda Jacinto is granted backwages, without deduction or qualification, from the time she was suspended until her actual reinstatement, the total of which, consistent with prevailing jurisprudence,[65] should not exceed five years.

SO ORDERED.

Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.
Narvasa, C.J., on official leave.

[1] Rollo, pp. 75-88.

[2] Former Eighth Division, composed of Justices Bernardo Ll. Salas, ponente; Jaime M. Lantin, chairman; and Ma. Alicia Austria-Martinez, member, concurring.

[3] CA Rollo, pp. 54-136.

[4] In CSC Resolution No. 94-2768 dated May 19, 1994; Rollo, pp. 91-92.

[5] In CSC Resolution No. 94-4090 dated September 21, 1993; Rollo, pp. 93-94.

[6] Rollo, p. 90.

[7] Assailed Decision, pp. 4-6; Rollo, pp. 78-80.

[8] 200 SCRA 323, August 6, 1991.

[9] This case was deemed submitted for resolution upon receipt by the Court of Respondents' Memorandum, dated March 31, 1997, on April 2, 1997.

[10] Petition, pp. 10-11. (Text in caps in the original.).

[11] Second paragraph of Sec. 2 which states, "Only questions of law may be raised in the petition and must be distinctly set forth. x x x."

[12] In *Fuentes vs. Court of Appeals*, G.R. No. 109849, February 26, 1997, we enumerated such instances as follows:

- "(1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;
- (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
- (8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.”

[13] “Sec. 4[, Article III]. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”

[14] “Sec. 8[, Article III]. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

[15] “Sec. 2. x x x

(5) The right to self-organization shall not be denied to government employees.”

[16] “Sec. 3. x x x

[The State] shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. x x x.”

[17] 7 Phil. 422, February 7, 1907, per Carson, J., which involved a gathering near the municipal building of about five hundred residents of San Carlos, Occidental Negros, to demand the ouster of certain municipal officials.

[18] Ibid., p. 426.

[19] 80 Phil. 71, January 27, 1948 per Feria, J., where Manila Mayor Fugoso was sought to be compelled to issue a permit for the holding of a rally at the Plaza Miranda intended as a protest against alleged fraud in the elections.

[20] 71 U.S. (Law ed.), 1105-1107.

[21] 125 SCRA 553, November 9, 1983, per Fernando, CJ.

[22] *Cabansag vs. Fernandez*, 102 Phil. 152, 161, October 18, 1957, per Bautista Angelo, J., explained this rule to mean, “as interpreted in a number of cases, x x x that the evil consequence of the comment or utterance must be ‘extremely serious and the degree of imminence extremely high’ before the utterance can be punished. The danger to be guarded against is the ‘substantive evil’ sought to be prevented. And this evil is primarily the ‘disorderly and unfair administration of justice.’”

The Court continued, “The question in every case, according to Justice Holmes [in *Schenck vs. U.S.*, 249 U.S. 47], is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that [C]ongress has a right to prevent. It is a question of proximity and degree.”

[23] “x x x. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have

recourse to the proper judicial authority.”

[24] 51 SCRA 189, June 5, 1973, where the petitioner labor union, against the wishes of the management, did not report for work in order to be able to stage a mass demonstration against alleged abuses of local police.

[25] Ibid., p. 205, citing *Marsh vs. Alabama*, 326 U.S. 501; *Tucker vs. Texas*, 326 U.S. 517; and *Pickering vs. Board of Education*, 391 U.S. 563, 574 (1968).

[26] 203 SCRA 596, November 15, 1991, per Gutierrez Jr., J.

[27] Ibid., p. 600. Sec. 8, Art. III, Constitution.

[28] *People vs. Ferrer*, 48 SCRA 382, December 27, 1972, per Castro J. where the Court, while upholding the validity of the Anti-Subversion Act which outlawed the Communist Party of the Philippines and other “subversive” organizations, clarified, “Whatever interest in freedom of speech and freedom of association is infringed by the prohibition against knowing membership in the Communist Party of the Philippines, is so indirect and so insubstantial as to be clearly and heavily outweighed by the overriding considerations of national security and the preservation of democratic institutions in this country.” It cautioned, though, that “the need for prudence and circumspection [cannot be overemphasized] in [the law’s] enforcement, operating as it does in the sensitive area of freedom of expression and belief.”

[29] Issued by former President Corazon C. Aquino on June 1, 1987.

[30] CSC Memorandum Circular No. 6, s. 1987, dated April 21, 1987.

[31] Section 14.

[32] 124 SCRA 1, August 3, 1983, also per Gutierrez Jr., J.

[33] Ibid., p. 13.

[34] 175 SCRA 686, July 28, 1989, per Cortes, J.

[35] Ibid., p. 698.

[36] *Supra*, per Narvasa, J., now C.J.

[37] Ibid.

[38] Art. 212 (o) of the Labor Code; *Lapanday Workers Union vs. National Labor Relations Commission*, 248 SCRA 95, September 7, 1995.

[39] *Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission*, 245 SCRA 627, July 6, 1995.

[40] Petition, p. 14; Rollo, p. 25.

[41] In justifying their mass actions, petitioners liken their activity to the pro-bases rally led by former President Corazon C. Aquino on September 10, 1991, participated in, as well, by public school teachers who consequently absented themselves from their classes. No administrative charges were allegedly instituted against any of the participants. (Petition, p. 15).

[42] G.R. No. 124678, July 31, 1997, per Regalado, J.

[43] Ibid., p. 6, citing *Board of Education v. New Jersey Education Association*, 53 NJ 29, 247 A2d 867 (1968).

[44] Rollo, p. 99.

[45] Cocofed vs. Trajano, 241 SCRA 363, February 15, 1995; Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, December 28, 1994.

[46] Acebedo Optical Co. vs. Court of Appeals, 250 SCRA 409, November 29, 1995.

[47] Magnolia Corp. vs. NLRC, 250 SCRA 332, November 24, 1995; TUCP vs. Laguesma, 236 SCRA 586, September 21, 1994.

[48] CSC Resolution No. 94-5973, dated November 3, 1994; Rollo, pp. 100-101.

[49] CSC Resolution No. 93-4090, dated September 21, 1993; Rollo, pp. 93-94.

[50] Petition, pp. 27-28; Rollo, pp. 38-39.

[51] CSC Resolution No. 93-4090, *supra*.

[52] Sec. 23, par. 4 (c) of the Rules implementing the Administrative Code and other pertinent civil service laws.

[53] Petition, p. 32; Rollo, p. 43.

[54] Subtitle A, Title I, Book V of E.O. 292, which took effect on November 23, 1989.

[55] Sec. 47 (2), *Ibid.*, providing that “[an] appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.”

[56] Sabello vs. Department of Education, Culture and Sports, 180 SCRA 623, December 26, 1989; City Mayor of Zamboanga vs. Court of Appeals, 182 SCRA 785, February 27, 1990; Bangalisan vs. Court of Appeals, *supra*.

[57] 170 SCRA 190, February 9, 1989.

[58] *Ibid.*, pp. 198, 200-201.

[59] *Supra*.

[60] *Supra*.

[61] 226 SCRA 356, September 14, 1993, per Bellosillo, J.

[62] *Ibid.*, p. 362

[63] *Ibid.*, p. 363.

[64] 33 SCRA 419, May 29, 1990.

[65] Balingasan, *supra*; Garcia, *supra*, citing Ginzon vs. Municipality of Murcia, 158 SCRA 1, February 8, 1988, and several other cases.

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