

FRANCISCO A. TAN, PETITIONER, VS. PEDRO M. GIMENEZ, AS AUDITOR GENERAL, AND MARTIN AGUILAR, JR., AS ACTING SECRETARY OF EDUCATION, RESPONDENTS.*G.R. No. 12525. February 19, 1960*

Ponente: PADILLA, J.

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This is a petition for review of the decision of the Auditor General denying the former's claim for back salaries.

The petitioner was head teacher in Habuhab barrio school, Caibiran, Leyte, with P140 monthly salary or P1680 annually. In a complaint filed with the Bureau of Civil Service, he was charged with gross misconduct for an immoral act committed in the evening of 4 June 1948 (administrative case No. R-2533). On 14 June 1949 the Commissioner of Civil Service found him guilty as charged and required him "to resign from the service, with prejudice to reinstatement in the teaching service, effective on his last day of duty with pay." He appealed to the Civil Service Board of Appeals. On 26 June 1954 the Civil Service Board of Appeals reversed the decision of the Commissioner of Civil Service and acquitted him of the charge. On 4 June 1955 the petitioner wrote to the Division Superintendent of Schools of Leyte "accepting the reinstatement offered to take effect on June 13, 1955 if the same comes within the purview of section 260 of the Revised Administrative Code." However, in view of ill health he applied "for an indefinite sick leave of absence." Attached to the letter was a certificate issued by Dr. Vicente L. Ramo stating that the petitioner was suffering from "Hypertension (labile)" and that he was advised to take a rest. On 14 July 1955 he wrote to the Division Superintendent of Schools of Leyte requesting payment of back salaries from 6 August 1949 to 12 June 1955, inclusive, at the rate of P1680 per annum, or a total of P9,598.58. According to the Accounting Officer of the Bureau of Public Schools, the salary due the petitioner as teacher at P140 monthly from 6 August 1949 to 17 February 1955 was P9,294.20. Deducting therefrom the sum of P5,509.63 which he received as salary for services rendered as clerk in the Office of the Provincial Treasurer of Leyte from 2 March 1951 to 17 February 1955, the sum of P3,784.57 was still due the petitioner. On 23 November 1955 the Director of Public Schools recommended to, the Secretary of Education that the sum of P3,784.57 be paid to the petitioner. On 16 February 1956 the Undersecretary of Education disregarded the Director's recommendation and denied the petitioner's claim on the ground that he was out of the service from 6 August 1949 to 1 March 1951, inclusive, he having been dismissed by the Commissioner of Civil Service for grave misconduct; that although the decision of the Commissioner was reversed on appeal by the Civil Service Board of Appeals, payment of back salaries to him during the period of removal from office was a matter of discretion; and that funds were not available.

On 6 June 1956 the petitioner filed his claim for back salaries in the amount of P9,598.58 with the Auditor General. On 20 June 1956 the Auditor General referred the claim together with the pertinent papers to the Director of Public Schools requesting comment thereon. The Director of Public Schools must have forwarded the papers regarding the petitioner's claim to the Secretary of Education for on 10 September 1956 the latter returned them to the former with the comment that the petitioner's removal from office by the Commissioner of Civil

Service "was final and executory, and regardless of the favorable outcome of the appeal made by petitioner to the Civil Service Board of Appeals, petitioner is not entitled to any benefit while out of the service," and denied his claim for back salaries but interposed no objection to his reinstatement to the service. On 9 November 1956 the Assistant Division Superintendent of Schools of Leyte wrote to the petitioner furnishing him with a copy of the indorsement of the Secretary of Education dated 10 September 1956 denying his claim.

On 12 December 1956 the petitioner again requested the Auditor General to approve his claim for back salaries. On 28 December 1956 the Auditor General indorsed the petitioner's claim to the Commissioner of Civil Service through the Secretary of Education and requested his comment thereon. On 18 January 1957 the Secretary of Education transmitted the petitioner's claim to the Commissioner of Civil Service with the comment that the Department reiterates its previous decision on the petitioner's claim. On 27 February 1957 the Commissioner of Civil Service returned the petitioner's claim to the Auditor General with the comment that "as it appears that the Secretary of Education, has, in the exercise of his discretion, already denied the claim of Mr. Tan for the payment of his alleged back salaries, which was reiterated in the preceding indorsement hereon, this Office is obviously not in a position to rule otherwise." On 9 March 1957 the Auditor General returned to the petitioner the papers on his claim with the statement that he concurs "in the views of the Commissioner of Civil Service expressed in the next preceding indorsement." On 27 March 1957 the petitioner requested the Auditor General to reconsider his decision. On 29 April 1957 the Auditor General denied his request for reconsideration.

Section 695 of the Revised Administrative Code, as amended by Commonwealth Act No. 598, partly provides:

* * * From any decision of the Commissioner of Civil Service on administrative investigations, an appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision.

Section 2, Commonwealth Act No. 598, establishing a Civil Service Board of Appeals, partly provides:

* * * The Civil Service Board of Appeals shall have the power and authority to hear and decide all administrative cases brought before it on appeal, and its decision in such cases shall be final, unless reversed or modified by the President of the Philippines * * *.

The appeal taken by the petitioner to the Civil Service Board of Appeals from the decision of the Commissioner of Civil Service finding him guilty of grave misconduct and requiring him to resign from the service with prejudice to reinstatement precluded the execution of the decision of the Commissioner of Civil Service. In other words, the decision did not become final and executory. The decision of the Civil Service Board of Appeals reversing that of the Commissioner of Civil Service and absolving the petitioner from the charge was not reversed or modified by the President. It, therefore, became the final decision on the petitioner's case. Consequently, the petitioner's removal from office was not in accordance with law; his reinstatement became a ministerial duty of the proper authority; and the payment of back salary was merely incidental to reinstatement.[1]

The fact that during the pendency of the petitioner's appeal in the Civil Service Board of Appeals, he worked as clerk in the Office of the Provincial Treasurer of Leyte from 2 March 1951 to 17 February 1955 and received the salary as such in the total sum of P5,509.63, does not constitute abandonment of his former position. He was ordered to resign from the service with prejudice to reinstatement pursuant to the decision of the Commissioner of Civil Service and by virtue thereof was prevented, from exercising the functions of his position and receiving the corresponding compensation therefor. While thus deprived of his office and emoluments thereunto appertaining the petitioner had to find means to support himself and his family. The fact that during the time his appeal was pending and was thus deprived of his office and salary, he sought and found employment in another branch of the government does not constitute abandonment of his former position. To deny him the right to collect his back

salaries during such period would be tantamount to punishing him after his exoneration from the charge which caused his dismissal from the service. However, as provided for in section 259 of the Revised Administrative Code, the sum of P5,509.63 received by the petitioner as clerk in the Office of the Provincial Treasurer of Leyte from 2 March 1951 to 17 February 1955 must be deducted from the total amount due him during the period of his illegal suspension.

It appears that the petitioner was deprived of his position and the corresponding compensation therefor since 6 August 1949. There is, however, no sufficient evidence to support his claim that on 17 February 1955 he was being reinstated only as a substitute teacher, hence he declined the offer of reinstatement. Consequently, he should be paid only up to that date when he was offered reinstatement in the service.

According to the Accounting Officer of the Bureau of Public Schools, the salary due the petitioner as teacher from 6 August 1949 to 17 February 1955 at the rate of P140 a month was P9,294.20. Deducting therefrom the sum of P5,509.63 the petitioner is still entitled to receive the sum of P3,784.57.

The decision of the Auditor General under review is reversed. Judgment is hereby rendered declaring the petitioner entitled to receive and the Government bound to pay him the sum of P3,784.57, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] *Batungbakal vs. National Development Co.*, 93 Phil., 182; 49 Off. Gaz., 2290, 2298; *NARIC vs. NARIC Workers Union*, 98 Phil., 563; 52 Off. Gaz., 6928; *Tabora vs. Montelibano*, 98 Phil., 800; 52 Off. Gaz., 3058.

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