

**FELIX UY, ROMAN CAGATIN, JAMES ENGUITO, EMMIE HURBODA
FRANCISCO OLAER, LEONCIO BUSTAMANTE, FRANCISCO RANARIO,
JOE OSIN, JORGE PEDIDA, JOSE BATISTING, LUCIO BATISTING,
SEGUNDINO ...***G.R. No. 130685. March 21, 2000*

Ponente: PUNO, J.

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Petitioners were among the more than sixty permanent employees of the Provincial Engineering Office, Province of Agusan del Sur, who were dismissed from the service by then Governor Ceferino S. Paredes, Jr. when the latter assumed office, allegedly to scale down the operations of the said office.[1] On July 11, 1988, a petition for reinstatement was filed by petitioners before the Merit Systems Protection Board (MSPB), docketed as MSPB Case No. 91-1739, alleging that Governor Paredes was motivated by political vengeance when he dismissed them and hired new employees to replace them. It appears that during the pendency of the petition for reinstatement, Governor Paredes issued Memorandum Order No. 3-A dated March 20, 1989 providing for the hiring of casual employees to replace the dismissed employees, allegedly due to exigency of service.

The MSPB required Governor Paredes to comment on the petition. On February 1, 1989, the governor specifically denied the allegations of petitioners that their dismissal was illegal. Subsequently, an amended petition and an amended answer were filed by the parties. Hearings were conducted by the Civil Service Regional Office No. X, Cagayan de Oro City, where both parties were represented by their respective counsels. The last hearing was held on June 29, 1990, after which the parties submitted their respective memorandum together with their evidence.

On January 29, 1993, the MSPB rendered a decision holding that the reduction in work force was not done in accordance with civil service rules and regulations, and ordering the reinstatement of petitioners.[2] The pertinent portions of said decision state, viz:

"The focal point of controversy is whether or not Administrative Order No. 88-01 streamlining the personnel complement of the PEO is in accordance with Civil Service Laws, Rules and Regulations.

The law applicable in the case at bar, which is hereby quoted as follows are Section 29 of E.O. 292 and Section 14 of the Rules on Personnel Actions and Policies, thus:

'Sec. 29. Reduction in Force. - Whenever it becomes necessary for lack of work or funds or due to change in the scope or nature of an agency's program or as a result of reorganization, to reduce the staff of any department or agency, those in the same group or class of positions in one or more agencies within the particular department or agency wherein the reduction is to be effected, shall be reasonably compared in terms of relative fitness, efficiency and length of service, and those found to be least qualified for the remaining position shall be laid off. (underlining supplied).

Sec. 14. The names of permanent employees laid off shall be entered in a reemployment list for the appropriate occupation. The list, arranged in the order of the employees' retention credit, shall be kept by the Department

or agency where the reduction took place, and a copy thereof shall be furnished the Commission. The Commission shall certify for purposes of reemployment from such list as the opportunity for reemployment arises.'

It has been conceded that reduction in force due to lack of funds is a valid ground for terminating the services of an employee. But this, of course, is subject to some limitations.

While the Governor of the Province of Agusan del Sur may take measures to retrench or reduce the work force yet this must be done in accordance with law and rules. As the plantilla schedule for the period of January to December 1988 would show, there are 106 employees in the provincial Engineering Office and out of these, 53 employees were terminated. There is no showing that these employees were compared in terms of relative fitness, efficiency and length of service. Thus, there is no basis in removing these employees except for the reason of lack of funds.

The manifest repugnance of the action taken by Governor Paredes, Jr. was further exacerbated by the issuance of the highly questionable Memorandum Order No. 3-A s. 1989 dated March 20, 1989. Said memorandum provides for the hiring of casuals under the façade of exigency of the public service. It was also a blatant violation of Section 14 of the Rules on Personnel Actions and Policies which succinctly states that the names of permanent employees laid off shall be entered in a reemployment list for the appropriate occupation. The list, arranged in the order of the employees' retention credit, shall be kept by the Department or agency where the reduction took place and copy thereof shall be furnished the Commission. They shall certify for purposes of reemployment from such list as the opportunity for reemployment arises.

x x x.....x x x.....x x x."

Pursuant to a Motion for Clarification filed by petitioners, the MSPB issued an Order dated April 19, 1993 which directed the Provincial Government of Agusan del Sur pay petitioners their back salaries and other money benefits for the period that they had been out of the service until their reinstatement.[3] In another motion dated May 24, 1993, petitioners sought an order directing the Provincial Government of Agusan del Sur to reinstate them and declare as invalid the appointments of those who replaced them. On June 24, 1993, the Provincial Governor of Agusan del Sur was ordered to reinstate the dismissed employees.[4] The Governor continued to refuse to implement the order to reinstate. Another motion was filed by petitioners and hence, an Order was issued by the MSPB on October 8, 1993, directing the Governor to show cause why he should not be declared in contempt. The matter was thereafter brought before the Civil Service Commission (CSC) which issued an Order dated December 14, 1993 directing the Governor to reinstate the employees with the caveat that should he fail to do so, the CSC would be constrained to initiate contempt proceedings against him and other responsible officials.[5] As per its Resolution No. 94-1567 dated March 21, 1994, the CSC actually initiated indirect contempt proceedings against the Provincial Governor who was by then Democrito Plaza.[6] This prompted Governor Plaza to comply, and herein petitioners were finally reinstated to their former positions.

The difficulties of petitioners did not end, for on July 9, 1994, the Provincial Administrator, for and in behalf of Governor Plaza, wrote a letter[7] to respondent COA through the Provincial Auditor, inquiring on whether or not:

- "1. The MSPB Civil Service Commission decision directing the incumbent Provincial Governor, Agusan del Sur to pay back salaries and other benefits of the reinstated sixty one (61) PEO employees, illegally dismissed by the former Provincial Governor Ceferino S. Paredes Jr., is final and executory;
2. The Commission on Audit is the only proper authority to determine disbursement of such is in order;
3. The former Provincial Governor Ceferino S. Paredes, Jr., who perpetrated the illegal act of dismissing the 61 PEO employees, would be personally liable for payment of back salaries and other benefits."

In the meantime, the Provincial Treasurer of Agusan del Sur made a partial payment to the reinstated employees on December 12, 1995, representing back salaries in the amount of P2,291,423.34.[8]

On July 2, 1996, respondent COA rendered its Decision No. 96-351[9] holding as follows:

"As regards the first issue, suffice it to state that the order of payment of the back salaries and other benefits due the petitioners has become final and executory there being no appeal filed by the Provincial Government of Agusan del Sur within the reglementary period.

Anent the issue on jurisdiction, the Supreme Court had occasion to rule in the case of Department of Agriculture vs. National Labor Relations Commission x x x, thus:

'Pursuant, however to C.A. No. 327, as amended by PD No. 1445, the money claim should first be brought to the Commission on Audit.'

The focal point of controversy in the case at bar is the issue as to whether or not subject claim for back salaries and other monetary benefits may be allowed in audit.

As a general proposition, a public official is not entitled to any compensation if he has not rendered any service, and the justification for the payment of salary during the period of suspension is that the suspension was unjustified or that the official was innocent x x x.

The Civil Service Commission, in Resolution No. 91-1739 dated January 29, 1993 ruled that there was illegal termination due to failure to comply with the provisions of Section 29 of Executive Order No. 292. The said Section 29, supra, provides that in case of reduction of force, those of the same group of positions shall be reasonably compared in terms of relative fitness, efficiency and length of service. As a consequence of the illegal termination of herein claimants, the Civil Service Commission ordered their reinstatement. It is a settled rule that when a government official has been illegally suspended or dismissed, and his reinstatement had been ordered, for all intents and 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 x x x.

Premises considered, This Commission sees no further legal impediment to the payment of the claims of Ms. Emmie Hurboda et al., of the Provincial Engineering Office, Province of Agusan del Sur, for back salaries and other monetary benefits in the total amount of P3,322,896.06 which has become the personal liability of former Governor Paredes, it appearing that the illegal dismissal was done in bad faith as clearly shown in the herein records."

As a result, the Provincial Government of Agusan del Sur, through its Acting Provincial Treasurer, refused to release petitioners' remaining back salaries and other monetary benefits. A motion for reconsideration filed by petitioners was denied by respondent COA in its Decision No. 97-497 dated August 28, 1997.[10]

In this special civil action for certiorari, petitioners raise the following assignment of errors:

"(A).....The Honorable Commission on Audit committed grave abuse of discretion tantamount to lack of jurisdiction when it promulgated Decision No. 97-497 on August 28, 1997 denying their motion for reconsideration and affirming its Decision No. 96-351, dated July 2, 1996 by ruling that payment of their back salaries and other money benefits became the personal liability of former Governor Ceferino Paredes Jr. and not of the Provincial Government of Agusan del Sur, after the Merit Systems Protection Board and the Civil Service Commission declared its decisions final and executory;

(B).....The Honorable Commission on Audit has no appellate authority to revise, amend and modify the final and partially executed decisions/orders of the Merit Systems Protection Board and the Civil Service Commission, being the same constitutional commission and co-equal with each other;

(C).....The decisions of the Merit Systems Protection Board and the Civil Service Commission have already been partially executed by the local government unit of the Province of Agusan del Sur by reinstating petitioners to their former positions in 1993 and partially paying their back wages in the amount of Two Million Two Hundred Ninety One Four Hundred Twenty Three and Thirty Four (P2,291,423.34) Pesos on December 12, 1995; and

(D).....The jurisprudence cited by public respondent in the case of *Dumlao vs. CA*, 114 SCRA 251; *Salcedo vs. CA*, 81 SCRA 408; and *Correa vs. CFI of Bulacan*, 92 SCRA 312 are not applicable in this case."

The hinge issue is whether respondent COA, in the exercise of its power to audit, can disallow the payment of back wages of illegally dismissed employees by the Provincial Government of Agusan del Sur which has been decreed pursuant to a final decision of the Civil Service Commission.

We hold that respondent COA is bereft of power to disallow the payment of petitioners' back wages.

FIRST. The ruling of the respondent COA is based on its finding that bad faith attended the dismissal of petitioners. In arriving at this conclusion, respondent COA relied solely on the MSPB decision of January 29, 1993 holding that the dismissal was illegal because first, it was made in violation of Section 29 of EO 292 and Section 14 of the Rules on Personnel Action and Policies, and second, new casual employees were hired under the guise of exigency of the public service. A careful perusal of said Decision will disclose that the MSPB never made a categorical finding of fact that former Governor Paredes acted in bad faith and hence, is personally liable for the payment of petitioners' back wages. Indeed, the MSPB even found that there was lack of funds which would have justified the reduction in the workforce were it not for the procedural infirmities in its implementation. If the MSPB found bad faith on the part of Governor Paredes it would have categorically decreed his personal liability for the illegal dismissal of the petitioners. To be sure, even the petitioners did not proceed from the theory that their dismissal is the personal liability of Governor Paredes. Familiar learning is our ruling that bad faith cannot be presumed and he who alleges bad faith has the onus of proving it.[11] In the case at bar, the decision of the MSPB by itself does not meet the quantum of proof necessary to overcome the presumption of good faith.

SECOND. The case at bar brings to the fore the parameters of the power of the respondent COA to decide administrative cases involving expenditure of public funds.[12] Undoubtedly, the exercise of this power involves the quasi-judicial aspect of government audit. As statutorily envisioned, this pertains to the "examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities".[13] The process of government audit is adjudicative in nature. The decisions of COA presuppose an adjudicatory process involving the determination and resolution of opposing claims. Its work as adjudicator of money claims for or against the government means the exercise of judicial discretion. It includes the investigation, weighing of evidence, and resolving whether items should or should not be included, or as applied to claim, whether it should be allowed or disallowed in whole or in part. Its conclusions are not mere opinions but are decisions which may be elevated to the Supreme Court on certiorari by the aggrieved party.[14]

Accordingly, the fundamental requirements of procedural due process cannot be violated in proceedings before the COA. In the case at bar, former Governor Paredes was never made a party to nor served a notice of the proceedings before the COA. While administrative agencies exercising quasi-judicial powers are not hide bound by technical procedures, nonetheless, they are not free to disregard the basic demands of due process.[15] Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative proceedings but an indispensable ingredient of due process.[16] It would be unfair for COA to hold former Governor Paredes personally liable for the claims of petitioners amounting to millions of pesos without giving him an opportunity to be heard and present evidence in his defense. Our rulings holding that public

officials are personally liable for damages arising from illegal acts done in bad faith are premised on said officials having been sued both in their official and personal capacities.[17]

THIRD. There is a further impediment in the exercise of the audit power of the respondent COA. The MSPB decision of January 29, 1993 became final and executory when the Provincial Government of Agusan del Sur failed to appeal within the reglementary period. To be sure, the decision has already been partially executed as the Acting Provincial Treasurer had paid petitioners some of their backwages. Again, our undeviating jurisprudence is that final judgments may no longer be reviewed or in any way modified directly or indirectly by a higher court, not even by the Supreme Court, much less by any other official, branch or department of Government.[18] Administrative decisions must end sometime as public policy demands that finality be written on controversies.[19] In the case at bar, the action taken by COA in disallowing the further payment by the Provincial Government of Agusan del Sur of backwages due the petitioners amended the final decision of the MSPB. The jurisdiction of the MSPB to render said decision is unquestionable. This decision cannot be categorized as void. Thus, we cannot allow the COA to set it aside in the exercise of its broad powers of audit. The audit authority of COA is intended to prevent irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties.[20] Payment of backwages to illegally dismissed government employees can hardly be described as irregular, unnecessary, excessive, extravagant or unconscionable. This is the reason why the Acting Provincial Treasurer, despite the pendency of his query with the COA, proceeded to release government funds in partial payment of the claims of petitioners.

It cannot likewise be said that the MSPB gravely abused its discretion in failing to hold former Governor Paredes personally liable. In the first place, it is not clear whether the petitioners sued former Governor Paredes in his personal capacity. Indeed, they did not appeal the ruling of the MSPB which did not hold Governor Paredes personally liable for the payment of their back salaries. Moreover, jurisprudence exists that under exceptional circumstances public officials who acted in bad faith in the performance of their official duties were not held personally liable.[21]

We are not unaware of our ruling in *Aguinaldo v. Sandiganbayan*,[22] that the conclusive effect of the finality of the COA's decision on the executive branch of the government relates solely to the administrative aspect of the matter. However, in the case at bar, the disallowance of the payment of backwages radically alters the MSPB decision which held the provincial government, not the provincial governor, personally liable. The COA decision affects not only the procedural, but more importantly the substantive rights of the parties.

FOURTH. We subscribe to the time-honored doctrine that estoppel will not lie against the State. In the case of *CIR v. CA, et al.*,[23] however, we held that "admittedly the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer." In the case at bar, a stringent application of the rule exempting the state from the equitable principle of estoppel will prejudice petitioners who are lowly employees of government.

Petitioners' sufferings started way back in 1988 when they were unceremoniously dismissed from the service. It took five years for the MSPB to decide in their favor. Still, they were not reinstated until the following year, and this only after several motions filed and orders issued to compel the concerned public officials to reinstate them. Then again, despite an Order issued as early as April 19, 1993 by the MSPB, the provincial government was able to pay petitioners, and even only partially at that, a good two and a half years after or on December 12, 1995. Now, after more than a decade, respondent COA holds that petitioners should run after Governor Paredes in his personal capacity to collect their claims. Worse, petitioners stand in danger of being made to reimburse what has been paid to them. Under the policy of social justice, the law bends over backward to accommodate the interests

of the working class on the humane justification that those with less privilege in life should have more in law.[24] Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience.[25] And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality.[26] Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for.[27]

Be that as it may, the Provincial Government of Agusan del Sur is not without remedy against Governor Ceferino S. Paredes, Jr., if he indeed acted in bad faith. Subject to the usual defenses, the proper suit may be filed to recover whatever damages may have been suffered by the provincial government.

WHEREFORE, the Orders of the respondent Commission on Audit dated July 2, 1996 and August 28, 1997 are SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Vitug, J., in the result.

[1] Pursuant to Administrative Order No. 88-1 issued on February 26, 1988.

[2] Annex C, Petition; Rollo, 50.

[3] Annex D, id.; Ibid., 55.

[4] Annex E, id.; Ibid., 58.

[5] Annex F, id.; Ibid., 61.

[6] Annex G, id.; Ibid., 63.

[7] Annex I, id.; Ibid., 67.

[8] Annex H, id.; Ibid., 66.

[9] Annex A-1, id.; Ibid., 45.

[10] Annex A-2, id.; Ibid., 47.

[11] *Guerrero v. Villamor*, 296 SCRA 88 (1998)

[12] Article IX-D, Section 2, 1987 Constitution.

[13] Sec. 26, PD 1445.

[14] *Fernandez, Jr., Statutory Construction for State Auditors*, pp. 1; 235.

[15] Alliance v. Hon. Laguesma, et al., 254 SCRA 565 (1996)

[16] Napocor v. NLRC, et al., 272 SCRA 704 (1997)

[17] The City of Angeles, et al. v. CA, et al., 261 SCRA 90 (1996)

[18] Johnson & Johnson (Phils.) Inc. v. CA, et al., 262 SCRA 298 (1996)

[19] CANORECO, et al. v. Hon. Torres, et al., 286 SCRA 666, 681 (1998)

[20] Article IX-D, Section 2(2), 1987 Constitution.

[21] See Cruz, et al. vs. Primicias, Jr., et al., 23 SCRA 998 (1968); Dario vs. Mison, et al., 176 SCRA 84 (1989)

[22] 265 SCRA 121 (1996)

[23] 267 SCRA 557 (1997)

[24] Ditan v. POEA, et al., 191 SCRA 823 (1990)

[25] Maternity Children's Hospital v. Secretary of Labor, et al., 174 SCRA 632 (1998)

[26] Marquez v. Secretary of Labor, et al., 171 SCRA 337 (1989)

[27] Supra.

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