

**HON. RICARDO T. GLORIA, IN HIS CAPACITY AS SECRETARY OF THE
DEPARTMENT OF EDUCATION, CULTURE, AND SPORTS, PETITIONER,
VS. COURT OF APPEALS, AMPARO A. ABAD, VIRGILIA M.
BANDIGAS,...**

G.R. No. 131012. April 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case arose out of the unfortunate strikes and walk-outs staged by public school teachers on different dates in September and October 1990. The illegality of the strikes was declared in our 1991 decision in *Manila Public School Teachers Association v. Laguio, Jr.*,^[1] but many incidents of those strikes are still to be resolved. At issue in this case is the right to back salaries of teachers who were either dismissed or suspended because they did not report for work but who were eventually ordered reinstated because they had not been shown to have taken part in the strike, although reprimanded for being absent without leave.

The facts are as follows:

Private respondents are public school teachers. On various dates in September and October 1990, during the teachers' strikes, they did not report for work. For this reason, they were administratively charged with (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 leave (AWOL), and placed under preventive suspension. The investigation was concluded before the lapse of their 90-day suspension and private respondents were found guilty as charged. Respondent Nicanor Margallo was ordered dismissed from the service effective October 29, 1990, while respondents Amparo Abad, Virgilia Bandigas, and Elizabeth Somebang were ordered suspended for six months effective December 4, 1990.^[2]

Respondent Margallo appealed to the Merit Systems and Protection Board (MSPB) which found him guilty of conduct prejudicial to the best interest of the service and imposed on him a six-month suspension.^[3] The other respondents also appealed to the MSPB, but their appeal was dismissed because of their failure to file their appeal memorandum on time.^[4]

On appeal, the Civil Service Commission (CSC) affirmed the decision of the MSPB with respect to Margallo, but found the other three (Abad, Bandigas, and Somebang) guilty only of violation of reasonable office rules and regulations by failing to file applications for leave of absence and, therefore, reduced the penalty imposed on them to reprimand and ordered them reinstated to their former positions.

Respondents filed a petition for certiorari under Rule 65 in this Court. Pursuant to Revised Administrative Circular No. 1-95, the case was referred to the Court of Appeals which, on September 3, 1996, rendered a decision (1) affirming the decision of the CSC with respect to Amparo Abad, Virgilia Bandigas, and Elizabeth

Somebang but (2) reversing it insofar as the CSC ordered the suspension of Nicanor Margallo. The appellate court found him guilty of violation of reasonable office rules and regulations only and imposed on him the penalty of reprimand.[5]

Private respondents moved for a reconsideration, contending that they should be exonerated of all charges against them and that they be paid salaries during their suspension. In its resolution, dated July 15, 1997, the Court of Appeals, while maintaining its finding that private respondents were guilty of violation of reasonable office rules and regulations for which they should be reprimanded, ruled that private respondents were entitled to the payment of salaries during their suspension "beyond ninety (90) days." Accordingly, the appellate court amended the dispositive portion of its decision to read as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, petition is hereby DENIED. CSC Resolution Nos. 93-2302 dated June 24, 1993 and 93-3124 dated August 10, 1993 (In re: Amparo Abad), CSC Resolution Nos. 93-2304 dated June 24, 1993 and 93-3227 dated August 17, 1993 (In re: Virgilia Bandigas) and CSC Resolution Nos. 93-2301 undated and 93-3125 dated August 10, 1993 (In re: Elizabeth Somebang) are hereby AFFIRMED while CSC Resolution Nos. 93-2211 dated June 21, 1993 are hereby MODIFIED finding petitioner Nicanor Margallo guilty of a lesser offense of violation of reasonable office rules and regulations and meting upon him the penalty of reprimand. Respondent DECS is ordered to pay petitioners Amparo Abad, Virgilia Bandigas, Elizabeth Somebang and Nicanor Margallo their salaries, allowances and other benefits during the period of their suspension/dismissal beyond the ninety (90) day preventive suspension. No pronouncement as to costs.[6]

Petitioner Ricardo T. Gloria, then Secretary of Education, Culture, and Sports, moved for a reconsideration insofar as the resolution of the Court of Appeals ordered the payment of private respondents' salaries during the period of their appeal.[7] His motion was, however, denied by the appellate court in its resolution of October 6, 1997.[8] Hence, this petition for review on certiorari.

Petitioner contends that the administrative investigation of respondents was concluded within the 90-day period of preventive suspension, implying that the continued suspension of private respondents is due to their appeal, hence, the government should not be held answerable for payment of their salaries. Moreover, petitioner lays so much store by the fact that, under the law, private respondents are considered under preventive suspension during the period of their appeal and, for this reason, are not entitled to the payment of their salaries during their suspension.[9]

Petitioner's contentions have no merit.

I. Preventive Suspension and the Right to Compensation in Case of Exoneration

The present Civil Service Law is found in Book V, Title I, Subtitle A of the Administrative Code of 1987 (E.O. 292). So far as pertinent to the questions in this case, the law provides:

SEC. 47. Disciplinary Jurisdiction. -

....

(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.

....

(4) 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.

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.

SEC. 52. Lifting of Preventive Suspension. Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

There are thus two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: (1) preventive suspension pending investigation (§51) and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated (§47(4)).

Preventive suspension pending investigation is not a penalty.[10] It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation respondent is found innocent of the charges and is exonerated, he should be reinstated.

A. No Right to Compensation for Preventive Suspension Pending Investigation Even if Employee is Exonerated

Is he entitled to the payment of salaries during the period of suspension? As already stated, the Court of Appeals ordered the DECS to pay private respondents their salaries, allowances, and other benefits "beyond the ninety (90) day preventive suspension." In other words, no compensation was due for the period of the preventive suspension pending investigation but only for the period of preventive suspension pending appeal in the event the employee is exonerated.

The separate opinion of Justice Panganiban argues that the employee concerned should be paid his salaries after his suspension.

The Civil Service Act of 1959 (R.A. No. 2260) provided for the payment of such salaries in case of exoneration. Sec. 35 read:

Sec. 35. Lifting of Preventive Suspension Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension.[11]

However, the law was revised in 1975 and the provision on the payment of salaries during suspension was deleted. Sec. 42 of the Civil Service Decree (P.D. No. 807) read:

Sec. 42. Lifting of Preventive Suspension Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service; Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

This provision was reproduced in §52 of the present Civil Service Law. It is noteworthy that the Ombudsman Act of 1989 (R.A. No. 6770) categorically provides that preventive suspension shall be "without pay." Sec. 24 reads:

Sec. 24. Preventive Suspension. - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

It is clear that the purpose of the amendment is to disallow the payment of salaries for the period of suspension. This conclusion is in accord with the rule of statutory construction that -

As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment.[12]

The separate opinion of Justice Panganiban pays no heed to the evident legislative intent to deny payment of salaries for the preventive suspension pending investigation.

First, it says that to deny compensation for the period of preventive suspension would be to reverse the course of decisions ordering the payment of salaries for such period. However, the cases[13] cited are based either on the former rule which expressly provided that "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension"[14] or that "upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid,"[15] or on cases which do not really support the proposition advanced.

Second, it is contended that the exoneration of employees who have been preventively suspended is proof that there was no reason at all to suspend them and thus makes their preventive suspension a penalty.

The principle governing entitlement to salary during suspension is cogently stated in Floyd R. Mechem's A Treatise on the Law of Public Offices and Officers as follows:

§864. Officer not entitled to Salary during Suspension from Office. - An officer who has been lawfully suspended from his office is not entitled to compensation for the period during which he was so suspended, even though it be subsequently determined that the cause for which he was suspended was insufficient. The reason given is "that salary and perquisites are the reward of express or implied services, and therefore cannot belong to one who could not lawfully perform such services." [16]

Thus, it is not enough that an employee is exonerated of the charges against him. In addition, his suspension must be unjustified. The case of *Bangalisan v. Court of Appeals* itself similarly states that "payment of salaries

corresponding to the period [1] when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension and [2] when the suspension is unjustified." [17]

The preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty is authorized by the Civil Service Law. It cannot, therefore, be considered "unjustified," even if later the charges are dismissed so as to justify the payment of salaries to the employee concerned. It is one of those sacrifices which holding a public office requires for the public good. For this reason, it is limited to ninety (90) days unless the delay in the conclusion of the investigation is due to the employee concerned. After that period, even if the investigation is not finished, the law provides that the employee shall be automatically reinstated.

Third, it is argued in the separate opinion that to deny employees salaries on the "frivolous" ground that the law does not provide for their payment would be to provide a "tool for the oppression of civil servants who, though innocent, may be falsely charged of grave or less grave administrative offenses." Indeed, the possibility of abuse is not an argument against the recognition of the existence of power. As Justice Story aptly put it, "It is always a doubtful course, to argue against the use or existence of a power, from the possibility of its abuse. . . . [For] from the very nature of things, the absolute right of decision, in the last resort, must rest somewhere - wherever it may be vested it is susceptible of abuse." [18] It may be added that if and when such abuse occurs, that would be the time for the courts to exercise their nay-saying function. Until then, however, the public interest in an upright civil service must be upheld.

Finally, it is argued that even in the private sector, the law provides that employees who are unjustly dismissed are entitled to reinstatement with full pay. But that is because R.A. No. 6715 expressly provides for the payment to such employees of "full backwages, inclusive of allowances, and . . . other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." [19] In the case of the public sector, as has been noted, the provision for payment of salaries during the preventive suspension pending investigation has been deleted.

B. Right to Compensation for Preventive Suspension Pending Appeal if Employee is Exonerated

But although we hold that employees who are preventively suspended pending investigation are not entitled to the payment of their salaries even if they are exonerated, we do not agree with the government that they are not entitled to compensation for the period of their suspension pending appeal if eventually they are found innocent.

Preventive suspension pending investigation, as already discussed, is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. On the other hand, preventive suspension pending appeal is actually punitive although it is in effect subsequently considered illegal if respondent is exonerated and the administrative decision finding him guilty is reversed. Hence, he should be reinstated with full pay for the period of the suspension. Thus, §47(4) states that respondent "shall be considered as under preventive suspension during the pendency of the appeal in the event he wins." On the other hand, if his conviction is affirmed, i.e., if he is not exonerated, the period of his suspension becomes part of the final penalty of suspension or dismissal.

It is precisely because respondent is penalized before his sentence is confirmed that he should be paid his salaries in the event he is exonerated. It would be unjust to deprive him of his pay as a result of the immediate execution of the decision against him and continue to do so even after it is shown that he is innocent of the charges for which he was suspended. Indeed, to sustain the government's theory would be to make the administrative decision not only executory but final and executory. The fact is that §47(2) and (4) are similar to the execution of judgment pending appeal under Rule 39, §2 of the Rules of Court. Rule 39, §5 provides that in the event the executed

judgment is reversed, there shall be restitution or reparation of damages as equity and justice may require.

Sec. 47 of the present law providing that an administrative decision meting out the penalty of suspension or dismissal shall be immediately executory and that if the respondent appeals he shall be considered as being merely under preventive suspension if eventually he prevails is taken from §37 of the Civil Service Decree of 1975 (P.D. No. 807). There was no similar provision in the Civil Service Act of 1959 (R.A. No. 2260), although under it the Commissioner of Civil Service could order the immediate execution of an administrative decision in the interest of the public service.[20] Nor was there provision for immediate execution of administrative decisions ordering dismissal or suspension in §695 of the Administrative Code of 1917, as amended by C.A. No. 598, §1.[21] Nonetheless, under R.A. No. 2260 the payment of salaries was ordered in cases in which employees were found to be innocent of the charges[22] or their suspension was held to be unjustified, because the penalty of suspension or dismissal was executed without a finding by the Civil Service Commissioner that it was necessary "in the interest of the public service." [23] On the other hand, payment of back salaries was denied where it was shown that the employee concerned was guilty as charged and the immediate execution of the decision was ordered by the Civil Service Commissioner "in the interest of the public service." [24]

Nothing in what has thus far been said is inconsistent with the reason for denying salaries for the period of preventive suspension. We have said that an employee who is exonerated is not entitled to the payment of his salaries because his suspension, being authorized by law, cannot be unjustified. To be entitled to such compensation, the employee must not only be found innocent of the charges but his suspension must likewise be unjustified. But though an employee is considered under preventive suspension during the pendency of his appeal in the event he wins, his suspension is unjustified because what the law authorizes is preventive suspension for a period not exceeding 90 days. Beyond that period the suspension is illegal. Hence, the employee concerned is entitled to reinstatement with full pay. Under existing jurisprudence, such award should not exceed the equivalent of five years pay at the rate last received before the suspension was imposed.[25]

II. PRIVATE RESPONDENTS ENTITLED TO BACK SALARIES ALTHOUGH FOUND GUILTY OF VIOLATION OF OFFICE RULES AND REGULATIONS AND REPRIMANDED

Private respondents were exonerated of all charges against them for acts connected with the teachers' strike of September and October 1990. Although they were absent from work, it was not because of the strike. For being absent without leave, they were held liable for violation of reasonable office rules and regulations for which the penalty is a reprimand. Their case thus falls squarely within ruling in *Bangalisan*, which likewise involved a teacher found guilty of having violated reasonable office rules and regulations. Explaining the grant of salaries during their suspension despite the fact that they were meted out reprimand, this Court stated:

With respect to petitioner Rodolfo Mariano, payment of his backwages is in order. A reading of the resolution of the Civil Service Commission will show that he was exonerated of the charges which formed the basis for his suspension. The Secretary of the DECS charged him with and he was later found guilty of grave misconduct, gross neglect of duty, gross violation of the Civil Service Law, rules and regulations and reasonable office regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of the service, and absence without official leave, for his participation in the mass actions on September 18, 20 and 21, 1990. It was his alleged participation in the mass actions that was the basis of his preventive suspension and, later, his dismissal from the service.

However, the Civil Service Commission, in the questioned resolution, made a finding that Mariano was not involved in the "mass actions" but was absent because he was in Ilocos Sur to attend the wake and interment of his grandmother. Although the CSC imposed upon him the penalty of reprimand, the same was for his violation of reasonable office rules and regulations because he failed to inform the school of his intended absence and neither did he file an application for leave covering such absences.

Under Section 23 of the Rules Implementing Book V of Executive Order No. 292 and other pertinent civil service laws, in violations of reasonable office rules and regulations, the first offense is punishable by reprimand. To 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.[26]

In *Jacinto v. Court of Appeals*,[27] a public school teacher who was found guilty of violation of reasonable office rules and regulations for having been absent without leave and reprimanded was given back salaries after she was exonerated of the charge of having taken part in the strikes.

Petitioner Secretary of Education contends, however, that respondents Abad, Bandigas, and Somebang signed a letter in which they admitted having taken part in the mass action. This question cannot be raised now. The Civil Service Commission gave no weight to this letter in view of individual letters written by the three citing reasons for their absences, to wit: Abad, because she decided to stay home to correct student papers; Bandigas, because she had to accompany her brother to the Commission on Immigration, and Somebang because of "economic reasons." Petitioner did not appeal from this ruling. Hence, he is bound by the factual findings of the CSC and the appellate court.

WHEREFORE, the decision, dated September 3, 1996, as amended by the resolutions, dated July 15, 1997 and October 6, 1997, of the Court of Appeals, is hereby **AFFIRMED** with the **MODIFICATION** that the award of salaries to private respondents shall be computed from the time of their dismissal/suspension by the Department of Education, Culture, and Sports until their actual reinstatement, for a period not exceeding five years.

SO ORDERED.

Romero, Bellosillo, Vitug, Kapunan, Quisumbing, Purisima, and Gonzaga-Reyes, JJ., concur.

Davide, C.J., concurs in the result and subject to the modification expressed in the separate opinion of Justice Panganiban.

Panganiban, J., please see separate opinion.

Puno, Pardo, Buena, and Ynares-Santiago, JJ., join Justice Panganiban's separate opinion.

Melo, J., in the result.

[1] 200 SCRA 323 (1991).

[2] Decision, pp. 4-5; Rollo, pp. 36-37.

[3] Decision, p. 6; Rollo, p. 38.

[4] *Supra*.

[5] Per Justice Fermin A. Martin, Jr. and concurred in by Justices Nathanael P. de Pano and Maximiano C. Asuncion.

[6] Resolution dated July 15, 1997, pp. 8-9; Rollo, pp. 29-30.

[7] Petition, Annex D; Rollo, p. 63.

[8] Rollo, p. 31.

[9] Petition, p. 9; Rollo, p. 15.

[10] Thus, Rule XIV of the Implementing Rules of the Civil Service Commission provides in pertinent parts:

Sec. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.

Sec. 25. The period within which a public officer or employee charged is placed under preventive suspension shall not be considered part of the actual penalty of suspension imposed upon the employee found guilty.

[11] Emphasis added.

[12] Ruben Agpalo, *Statutory Construction* 76-77 (1990).

[13] *Miranda v. Commission on Audit*, 200 SCRA 657 (1991); *Bangalisan v. Court of Appeals*, 276 SCRA 61 (1997); *Jacinto v. Court of Appeals*, 281 SCRA 657 (1997); and *Garcia v. Commission on Audit*, 226 SCRA 356 (1993).

In *Miranda v. Commission on Audit*, *supra*, although the facts arose when P.D. No. 807 was already in effect, the Court ordered payment of "backwages" during the period of preventive suspension citing as authority the case of *Abellera v. City of Baguio*, 125 Phil. 1035 (1967). However, in *Abellera* the Court allowed recovery of salaries only for the time that the employee was suspended pending appeal. No compensation was paid for the period of suspension pending investigation. The employee in that case was preventively suspended from January 18, 1960 to May 24, 1960. As the investigation lasted more than 90 days, he was reinstated in office. He was later found guilty and ordered dismissed from the service effective July 10, 1961. On appeal to the Civil Service Board of Appeals, the penalty was reduced to two months suspension without pay and he was finally reinstated on November 11, 1963. The employee's suspension from office from July 10, 1961 to November 10, 1963 was held to be unjustified and he was ordered paid his salaries for that period. But no award for the period of preventive suspension from January 18, 1960 to May 24, 1960 was granted.

In *Bangalisan v. Court of Appeals*, *supra*, this Court held that the payment of salaries for the period during which an employee is suspended may be decreed if he is found innocent of the charges which caused the suspension and when the suspension is unjustified, citing the cases of *Miranda v. Commission on Audit*, *supra*, and *Abellera v. City of Baguio*, *supra*, which, as noted, did not really allow compensation for the period of preventive suspension. On the other hand, the other case cited, *Tañala v. Legaspi*, 121 Phil. 541 (1965), was decided under §260 of the Administrative Code of 1917, which unlike the present law, provided for the payment of back salaries for the period of preventive suspension.

In *Jacinto v. Court of Appeals*, *supra*, the award of back salaries in favor of petitioner Jacinto was based on the ruling in *Bangalisan* as above summarized. The decision in that case is, therefore, subject to the sound observation made on the decision in *Bangalisan*. On the other hand, the case of *Garcia v. Chairman, Commission on Audit*, *supra*, did not involve any question on suspension - preventive or otherwise.

[14] R.A. No. 2260, §35.

[15] Administrative Code of 1917, §260.

[16] Emphasis added.

[17] 276 SCRA at 631.

[18] *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

[19] Labor Code, Art. 279.

[20] *Yarcia v. City of Baguio*, 144 Phil. 351 (1970); *Abellera v. City of Baguio*, *supra*.

[21] What it provided was that the decision of the Commissioner of Civil Service may be appealed to the Civil Service Board of Appeals whose decisions shall be final unless reversed or modified by the President.

[22] Tañala v. Legaspi, supra.

[23] Abellera v. City of Baguio, supra.

[24] Yarcia v. City of Baguio, supra; Villamor v. Lacson, 120 Phil. 1213 (1964).

[25] Miranda v. Commission on Audit, supra at 662 (1991), citing Gabriel v. Domingo, 189 SCRA 672 (1990); Rubio v. PHHC, 185 SCRA 656 (1990); Gementiza v. Court of Appeals, 113 SCRA 477 (1982); Balquiedra v. CFI of Capiz, 80 SCRA 123 (1977); Cristobal v. Melchor, 78 SCRA 175 (1977).

Justice Panganiban contends that since the rule limiting recovery of salaries to five years is based on the rule in private employment, in cases of illegal dismissal, the rule applicable to government employment should now be changed because Art. 279 of the Labor Code, as amended by R.A. No. 6715, has removed the limitation and now allows recovery of "full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." As long as the rule was based on caselaw, the contention would be plausible. But the change in the labor law was made by statute and courts cannot simply apply the statute to government employment without amending that statute.

[26] 276 SCRA at 631-632.

[27] 281 SCRA 657 (1997).

SEPARATE OPINION

PANGANIBAN, J.:

I concur with the ponencia insofar as it denies the petition and affirms the Court of Appeals Decision and Resolutions finding private respondents guilty only of a violation of office rules and regulations, meting upon them the penalty of reprimand and reinstating them in the civil service.

I beg to disagree, however, insofar as it deprives private respondents their back salaries corresponding to the entire period of their preventive suspension.

Private Respondents Liable
for Violation of Reasonable
Office Rules and Regulations

Like the majority, I do not find any reversible error or abuse of discretion in the factual finding of the Court of Appeals that private respondents did not actually participate in the September 1991 mass actions staged in violation of law by various public schoolteachers. They were, however, found to have absented themselves from their classes without filing an application for leave of absence. For this lapse, they indeed deserve a reprimand, pursuant to Section 23, Rule XIV (Discipline) of the Rules Implementing the Civil Service Law, as well as existing Jurisprudence which I shall cite later.

Private Respondents Entitled
to Back Salaries Without
Qualification or Deduction

Mr. Justice Mendoza's ponencia defines two kinds of preventive suspension for civil service employees charged with offenses punishable with removal or suspension: "(1) preventive suspension pending investigation (§51) and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal but, after review, the respondent is exonerated (§47(4))."[1]

Accordingly, the esteemed justice makes a distinction in the grant of back salaries. In the first instance, he says, the suspended employees (pending investigation) are NOT entitled to back pay, regardless of whether they are eventually exonerated from the charges for which they were investigated. However, if and when they are exonerated after appeal, they may be granted back salaries, but only those corresponding to the appeal or review period until actual reinstatement, and not exceeding five years.

This stance being adopted by the majority reverses several unanimous en banc decisions, in which this Court ordered payment of back salaries without qualification or deduction. In *Miranda v. Commission on Audit*,^[2] the Court, noting that the applicable law mandated that preventive suspension should not be longer than 90 days, deemed Miranda's suspension for almost eight (8) years unreasonable and unjustified. It thus resolved that he was entitled to back wages for the period of his suspension not exceeding five (5) years, consistent with existing jurisprudence.^[3]

In *Bangalisan v. Court of Appeals*,^[4] the Court ordered that Petitioner Mariano "be given back wages without deduction or qualification from the time he was suspended until his actual reinstatement which, under prevailing jurisprudence, should not exceed five years." The Court ruled: "To deny petitioner Mariano his back wages during his suspension would be tantamount to punishing him after his exoneration from the charges which [had] caused his dismissal from the service."^[5]

The same rationale was given in *Jacinto v. Court of Appeals*,^[6] in which we also granted Petitioner Jacinto "back wages, without deduction or qualification, from the time she was suspended until her actual reinstatement, the total of which, under prevailing jurisprudence, should not exceed five years."

In fact, in *Garcia v. Chairman, Commission on Audit*,^[7] where the petitioner, several years after he had been summarily dismissed from the government service purportedly for dishonesty, was granted executive clemency "not because of lack of sufficient proof of his commission of the offense but xxx, more importantly, he did not commit the offense charged," the Court found it "fair and just to award petitioner full back wages from 1 April 1975 when he was illegally dismissed, to 12 March 1984 when he was reinstated, xxx without deduction or qualification." Emphasizing with petitioner, the Court held:^[8]

"xxx Verily, law, equity and justice dictate that petitioner be afforded compassion for the embarrassment, humiliation and, above all, injustice caused to him and his family by his unfounded dismissal. This Court cannot help surmising the painful stigma that must have caused petitioner, the incursion on his dignity and reputation, for having been adjudged, albeit wrongfully, a dishonest man xxx."

Indeed, where the suspension of civil servants has, from the very beginning, no reason other than to ensure an unhampered investigation, there is no justification for withholding their salaries, whether immediately upon investigation or after appeal or petition for review, much less after their exoneration. They need not even be found fully innocent of any misdemeanor, as the public school-teachers concerned in *Bangalisan* and *Jacinto* who were actually found to have violated reasonable office rules and regulations. Such administrative offense, however, is punishable with reprimand only, not suspension or dismissal. Hence, they were granted their back salaries for the period of their suspension, because they had not committed any grave act warranting their suspension.

The rationale for the grant of back salaries to suspended public servants is their exoneration from the charges leveled against them that were punishable with either dismissal or suspension. Needless to say, only when the

charges carry either of these extreme administrative penalties may they be preventively suspended pending investigation. If, after investigation, they are found to be innocent or culpable of lesser offenses not punishable with suspension or dismissal, they must be immediately reinstated AND granted full back salaries corresponding to the period of their suspension. In the first place, if they have been found to be not guilty of any offense warranting even just a suspension, there is no justifiable reason to deprive them of work and of income therefor. In these cases, their preventive suspension must be deemed unjustified.

The majority admits that preventive suspension pending investigation is not a penalty, but is only a means of enabling the disciplining authority to conduct an unhampered investigation.[9] Not being a penalty, there is therefore NO reason to deny employees their salaries for such period, especially after they are proven innocent of any offense punishable with suspension or dismissal. I respectfully submit that to withhold an exonerated employee's pay for such period would in fact transform the nature of preventive suspension into a penalty -- a penalty which is unauthorized by law, in contravention of the fundamental right of every individual to due process, and therefore unconstitutional.

The "no-work-no-pay" principle should not be applied in these cases. We must consider that, ordinarily, suspended employees are willing to work, but they do not have a choice. Because of some serious charges leveled against them, they are not allowed to report for work. Investigations may take up to ninety (90) days or three (3) months. In the meantime, they do not receive their salaries and other benefits. And yet, the charges against them may have been baseless or aggravated without good reason, in which case their suspensions are unjustified ab initio. In these instances, I repeat, it is but right to grant them full back pays.

Admittedly, the purpose behind preventive suspensions pending investigation is noble. It is intended to enable the disciplining authorities or the investigating officials to probe the charges against respondents by preventing the latter from intimidating or in any way influencing witnesses against them.[10] But, I submit, it would be totally unfair to respondents who are undeserving of the penalty of suspension or dismissal to be deprived of their salaries for such period. To repeat, they cannot be faulted for not rendering any work during the period of preventive suspension, because that is merely what the law mandates.

Significantly, the Civil Service Law does not state that exonerated employees are not entitled to back salaries corresponding to the preventive suspension period. Such silence of the law should not ipso facto be interpreted as a denial of the right, pursuant to rules on statutory construction. In any event, the rules on the interpretation of laws are mere tools used to ascertain legislative intent.[11] They are not necessarily applicable at all times, particularly when the intention to change the meaning of the previous law is not clear. In the case of the present Civil Service Law, which is found in Executive Order No. 292 issued by then President Corazon Aquino in the exercise of her legislative powers under the Freedom Constitution, its legislative purpose cannot be clearly established, because it has no recorded deliberations from which to verify such intent. Consequently, we should not completely rely on the general rule on amendment by deletion.[12] We should not hold the omission of words in the later statute as necessarily altering the construction of the earlier one, for we may do so only "where the intent of the legislature to make such change is clear of construction."[13]

In any event, in the absence of an express prohibition on the payment of back salaries, any doubt should be settled in favor of the employee. As our fundamental law explicitly mandates, "The State shall afford full protection to labor xxx." [14] This Court has invariably declared that it will not hesitate to tilt the scales of Justice in favor of the working class, for the Constitution dictates that "the State xxx shall protect the rights of workers and promote their welfare." [15] There is no reason not to apply this principle in favor of civil service employees as well, for they are very much part of the working class. And the government as their employer should set the example in upholding the constitutional mandate to safeguard their rights and interests.

Needless to say, our Constitution stands above all laws; more so, above any treatise including that of Mechem which the ponencia cites. The interpretation of general laws on public officers in foreign jurisdictions has no application in the present case, as our law has no explicit injunction against the payment of back salaries for preventively suspended employees. Moreover, the United States Constitution provides no express mandate, similar to that found in our Constitution, to "afford full protection to labor" and to "protect the rights of workers and promote their welfare."

The grant of back pay is a matter not merely of compassion and mercy for employees temporarily suspended from work but, more important of Justice and equity. The exoneration of the employees proves that there was no reason at all to suspend them in the first place. To deny them their incomes on the frivolous ground that the law does not expressly provide for the grant thereof would provide a tool for the oppression of civil servants who, though innocent, may be falsely charged of grave or less grave administrative offenses. It plainly opens the door to harassment of public officials and employees by unjustly depriving them of their meager incomes and consequently subjecting them and their families to difficult circumstances.

Even in the private sector, the law and the existing jurisprudence grant employees who are unjustly dismissed from work not only reinstatement without loss of seniority rights and other privileges, but also full back wages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their compensation was withheld from them up to the time they were actually reinstated.[16]

Civil Service Law Different
from Ombudsman Act

In this regard, I believe the Civil Service Law should be distinguished from the Ombudsman Act (RA 6770) which categorically and expressly provides that the suspended employee who is exonerated after preventive suspension is entitled to reinstatement, but not back salaries, viz.:

"SEC. 24. Preventive suspension. - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

"The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided." (Emphasis supplied.)

Hence, in *Callanta v. Ombudsman*,[17] although some of the petitioners were only reprimanded by the Court for violation of the Ethical Standards Law, no back pay was awarded.

WHEREFORE, I vote to DENY the petition and to GRANT private respondents full back salaries, without qualification or deduction, from the time of suspension, including the period of preventive suspension, until actual reinstatement.

[1] Main Decision, p. 6.

[2] 200 SCRA 657, 662, August 16, 1991, per Paras, J.

[3] I believe that this five-year limitation on back salaries of civil servants should be reexamined. This restriction has no statutory basis. Rather, it was founded on the old Mercury Drug rule limiting back wages to illegally

dismissed employees in the private sector. As the Court, through Justice Cecilia Muñoz Palma, then held in *Cristobal v. Melchor* (78 SCRA 175, 187, July 29, 1977; citing *Mercury Drug Co., Inc. v. CIR*, [56 SCRA 694, April 30, 1974]):

"Applying by analogy the rulings of this court in the matter of fixing backwages to employees who were victims of unfair labor practices of their employers, so as to obviate the necessity of a hearing on the point and avoid further delay, and considering the lapse of almost nine years before appellant filed this suit, We resolve to grant back salaries at the rate last received by him only for a period of five (5) years without qualification and deduction."

However, the limitation on back wages in the private sector has been deleted, by virtue of Sec. 34 of RA 6715, amending Art. 279 of the Labor Code, which now reads:

"ART. 279. Security of Tenure. xxx An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

Hence, we ruled in *Bustamante v. NLRC* (*infra*, pp. 70-71, per Padilla, J.):

"xxx The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the 'deduction of earnings elsewhere' rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to 'full backwages' as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for 'full backwages' to illegally dismissed employees is clear, plain and free from ambiguity and, therefore, must be applied without attempted or strained interpretation. *Index animi sermo est*.

"Therefore, in accordance with R.A. No. 6715, petitioners are entitled to their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld from them up to the time of their actual reinstatement."

This being the case, I believe that civil service employees should also be granted the same benefit of full back wages without qualification or deduction. The matter, however, has not been raised as an issue in the present Petition. Hence, although I mentioned it during the Court's deliberation, the question could not be ruled upon without violating the fundamental tenets of due process.

[4] 276 SCRA 619, 634, July 31, 1997, per Regalado, J.

[5] At p. 632.

[6] 281 SCRA 657, 683, November 14, 1997, per Panganiban, J.

[7] 226 SCRA 356, September 14, 1993, per Bellosillo, J.

[8] At p. 365.

[9] Main Decision, pp. 6-7.

[10] *Ibid.*, p. 6.

[11] Ruben E. Agpalo, *Statutory Construction*, 1990 ed., p. 35.

[12] *Ibid.*, pp. 76-77.

[13] Ibid, p. 78.

[14] § 3, par. 1, Art. XIII, Constitution.

[15] § 18, Art. II, Ibid.; Bataan Shipyard & Engineering Corp. v. NLRC, 269 SCRA 199, March 4, 1997; Philippine Airlines, Inc. v. Santos Jr., 218 SCRA 415, February 4, 1993; Holiday Inn Manila v. NLRC, 226 SCRA 417, September 14, 1993.

[16] Art. 279, Labor Code, as amended by RA 6715; Bustamante v. NLRC, 265 SCRA 61, November 28, 1996; PLDT v. NLRC, 276 SCRA 462, July 31, 1997.

[17] 285 SCRA 648, January 30, 1998, per Panganiban, J.

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