

EVERDINA ACOSTA, NOEMI ACOSTA, ELVIRA AMPARADO, REBECCA AQUINO, ROBERTO ARCAYA, EVA ARCEO, JULIET ARELLANO, ANITA ASCANO, GRACE AUSTRA, LUISA AVILES, SUSIE AW, VICTORIA BADILLO ...

G.R. No. 132088. June 28, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari which seeks to set aside the Decision[1] dated August 29, 1997 and Resolution[2] dated January 7, 1998 of the Court of Appeals in CA-G.R. SP No. 39878, affirming the Resolutions[3] of respondent Civil Service Commission (CSC) finding petitioners guilty of conduct prejudicial to the service and imposing a penalty of six-(6) months suspension without pay.

Petitioners are teachers from different public schools in Metro Manila. On various dates in September and October 1990, petitioners did not report for work and instead, participated in mass actions by public school teachers at the Liwasang Bonifacio for the purpose of petitioning the government for redress of their grievances.

On the basis of reports submitted by their respective school principals that petitioners participated in said mass actions and refused to comply with the return-to-work order issued on September 17, 1990 by then Secretary Isidro D. Cariño of the Department of Education, Culture and Sports (DECS), petitioners were administratively charged with such offenses as grave misconduct, gross neglect of duty, gross violation of 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. Petitioners failed to answer these charges. Following the investigations conducted by the DECS Investigating Committees, Secretary Cariño found petitioners guilty as charged and ordered their immediate dismissal from the service.[4]

Petitioners appealed the orders of Secretary Cariño to the Merit Systems Protection Board (MSPB) and later to the CSC. In 1995, the CSC modified the said orders of Secretary Cariño as follows:

WHEREFORE, the Commission hereby finds Everdina Acosta guilty of Conduct Prejudicial to the Best Interest of the Service. She is hereby meted out the penalty of six (6) months suspension without pay. Considering the period of time she was out of service, she is automatically reinstated to her former positions (sic).[5]

Following the denial of their motion for reconsideration, petitioners questioned the matter before the Court of Appeals. The appellate court denied their petition for certiorari and subsequent motion for reconsideration. Hence, this petition.

Petitioners submit the following issues for our consideration:

RESPONDENT COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT AFFIRMED THE ASSAILED RESOLUTIONS OF THE CIVIL SERVICE COMMISSION THAT WRONGLY PENALIZED

PETITIONERS WHOSE ONLY "OFFENSE" WAS TO EXERCISE THEIR CONSTITUTIONAL RIGHT TO PEACEABLY ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

RESPONDENT COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT AFFIRMED THE ASSAILED RESOLUTIONS OF THE CIVIL SERVICE COMMISSION THAT WRONGLY DENIED PETITIONERS THEIR RIGHT TO BACKWAGES.

This petition is not impressed with merit.

Petitioners do not deny their absence from work nor the fact that said absences were due to their participation in the mass actions at the Liwasang Bonifacio. However, they contend that their participation in the mass actions was an exercise of their constitutional rights to peaceably assemble and petition the government for redress of grievances. Petitioners likewise maintain that they never went on strike because they never sought to secure changes or modification of the terms and conditions of their employment.

Petitioners' contentions are without merit. The character and legality of the mass actions which they participated in have been passed upon by this Court as early as 1990 in *Manila Public School Teachers' Association (MPSTA) v. Laguio, Jr.*[6] wherein we ruled 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' sworn duty to perform, undertaken for essentially economic reasons." [7] In *Bangalisan v. Court of Appeals*, [8] we added that:

It is an undisputed fact that there was a work stoppage and that petitioners' purpose was to realize their demands by withholding their services. The fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.

The ability to strike is not essential to the right of association. In the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose.

Further, herein petitioners, except Mariano, are being penalized not because they exercised their right of peaceable assembly and petition for redress of grievances but because of their successive unauthorized and unilateral absences which produced adverse effects upon their students for whose education they are responsible. The actions of petitioners definitely constituted conduct prejudicial to the best interest of the service, punishable under the Civil Service law, rules and regulations.

As aptly stated by the Solicitor General, "It is not the exercise by the petitioners of their constitutional right to peaceably assemble that was punished, but the manner in which they exercised such right which resulted in the temporary stoppage or disruption of public service and classes in various public schools in Metro Manila. For, indeed, there are efficient and non-disruptive avenues, other than the mass actions in question, whereby petitioners could petition the government for redress of grievances."

It bears stressing that suspension of public services, however temporary, will inevitably derail services to the public, which is one of the reasons why the right to strike is denied government employees. It may be conceded that the petitioners had valid grievances and noble intentions in staging the "mass actions," but that will not justify their absences to the prejudice of innocent school children. Their righteous indignation does not legalize an illegal work stoppage. [9]

In *Jacinto v. Court of Appeals*, [10] *De la Cruz v. Court of Appeals*, [11] and *Alipat v. Court of Appeals*, [12] we upheld our rulings in *MPSTA* and *Bangalisan*. Considering the factual circumstances of this case and the doctrine of *stare decisis* to which we consistently adhere, we find no compelling reason to deviate from our earlier rulings in these related cases.

Anent the second issue, petitioners invoke our statement in *Bangalisan* that payment of salaries corresponding to the period when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension and if his suspension is unjustified. Petitioners cite CSC Resolution No. 93-162 and contend that the determination of the CSC therein that not an iota of evidence was given to substantiate the conclusion that they participated in a "teacher's strike" amounted to a finding that they were innocent of the charges filed against them.

As a general proposition, a public official is not entitled to any compensation if he has not rendered any service.[13] While there are recognized instances when backwages may be awarded to a suspended or dismissed public official who is later ordered reinstated, as pointed by petitioners in citing *Bangalisan*, the factual circumstances of the case at bar impel us to rule otherwise.

Petitioners' reliance on CSC Resolution No. 93-162 is misplaced. Said CSC resolution disposed of the appeals of Fely Ilarina, Adelaida Dela Cruz, Alicia Galvo, Nenita Albios and Nerissa Abellanda. Petitioners were never parties to their appeals and, therefore, cannot cite CSC Resolution No. 93-162 in support of their contention. Petitioners also overlook the fact that although no evidence was presented to prove that Ilarina, et al. participated in the mass actions, the CSC explained that the deficiency was cured by their admissions during the hearings before the MSPB.[14] More importantly, however, herein petitioners' claim of exoneration is belied by the determination of the CSC that their participation in the mass actions constituted conduct prejudicial to the service. Being found liable for a lesser offense is not equivalent to exoneration.[15]

Petitioners also point out that from the issuance of the orders of dismissal by Secretary Cariño to the modification thereof by the CSC, almost five (5) years elapsed. Petitioners argue that the period in excess of their preventive suspension and penalty of six (6) months suspension amounted to unjustified suspension for which an award of backwages was proper pursuant to our rulings in *Bautista v. Peralta*[16] and *Abellera v. City of Baguio*. [17]

We disagree. It will be recalled that in *Jacinto*, we upheld the legality of the immediate execution of the dismissal orders issued by Secretary Cariño on the ground that under Section 47(2), [18] Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987, the decision of a department secretary confirming the dismissal of an employee under his jurisdiction is executory even pending appeal thereof.[19] Since dismissal orders remain valid and effective until modified or set aside, the intervening period during which an employee is not permitted to work cannot be argued as amounting to unjustified suspension. In *Gloria v. Court of Appeals*, [20] we further explained that:

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.[21]

Petitioners' reliance on *Fabella v. Court of Appeals* [22] is likewise unavailing. In that case, the petitioners therein immediately went to court to seek injunctive relief against the DECS administrative proceedings on the ground that they were deprived of due process. The trial court declared the administrative proceedings void and ordered the payment of backwages to the petitioners therein. The Court of Appeals then upheld the order of the trial court. In affirming both the trial court and the Court of Appeals, we stated therein that:

x x x Because the administrative proceedings involved in this case are void, no delinquency or misconduct may

be imputed to private respondents. Moreover, the suspension or dismissal meted on them is baseless. Private respondents should, as a consequence, be reinstated and awarded all monetary benefits that may have accrued to them during the period of their unjustified suspension or dismissal. x x x[23]

On the other hand, in the case at bar, petitioners initially assailed the alleged non-observance of due process by the DECS Investigating Committees only upon appeal to the MSPB. Significantly, however, it has been our consistent ruling that an appeal is curative of any supposed denial of due process.[24] Thus, after full ventilation of their case before the MSPB and CSC, and later on before the Court of Appeals, petitioners cannot now allege denial of due process to justify their claim for backwages.

WHEREFORE, the instant petition is DENIED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.

Quisumbing, J., no part.

[1] Penned by now Supreme Court Associate Justice Fidel P. Purisima and concurred in by Associate Justices Ma. Alicia Austria-Martinez and Romeo J. Callejo, Sr.

[2] Penned by Justice Purisima and concurred in by Justices Callejo and Oswaldo D. Agcaoili.

[3] Annexes "2" to "299" of the Petition before the Court of Appeals, CA-Rollo, pp. 116-710.

[4] Petition, Rollo, pp. 22-23; Resolutions to this effect were issued by Secretary Cariño on various dates in October 1990. Except for the names of the parties, dates and case numbers, said resolutions similarly provided as follows:

October 15, 1990
Case No. DECS x x x

The Regional Director
DECS, National Capital Region
PPSTA Building, Banawe St.,
Quezon City

DECISIONDear Sir:

This is a motu-proprio administrative complaint separately filed by the Secretary of Education, Culture and Sports against the following public school teachers, namely:

NAME SCHOOL ABSENCES

x x x x x x x x

based on the report submitted by their respective school principals wherein it was alleged that the above-named teachers participated in the mass action/illegal strike on Sept. 17-21, 1990 and subsequently defied the return-to-work order dated September 17, 1990 issued by this Office, which acts constitute grave misconduct, gross neglect of duty, gross violation of 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 (AWOL), in violation of Presidential Decree 807, otherwise known as the Civil Service Decree of the Philippines.

Required to explain within a period of not less than 72 hours but not more than 5 days from receipt of the complaint, respondents failed to submit the required answer within the given time and up to the present, and despite the denial of their request for extension of 30 days within which to submit their answers dated September 25, 1990 filed by their counsel, Atty. Gregorio Fabros, in a letter of this office to him dated September 28, 1990, respondents failed to submit the same, which failure, is considered a waiver on their part of their right to answer the charges and to controvert the same.

Wherefore, after careful evaluation of the records, this Office finds the respondents guilty as charged.

In accordance with Memorandum Circular 30 s. 1989 of the civil Service Commission on guidelines in the Application of Penalty in Administrative Cases, the herein respondents are dismissed from office effective immediately.

Advice of the date the respondents received this decision is desired.

Very truly yours,

(Signed)
ISIDRO D. CARIÑO
Secretary

Copy furnished:

1. All respondents
2. The IBM, Dakota, Manila
3. City Superintendent of Schools

[5] Annex "C," Rollo, pp. 73; Except for the names of the parties, dates and case numbers, the dispositive portion of the orders of the CSC were similarly worded.

[6] 200 SCRA 323 (1991).

[7] Id. at 329-30.

[8] 276 SCRA 619 (1997).

[9] Id. at 627-628.

[10] 281 SCRA 657 (1997).

[11] G.R. No. 126183, March 25, 1999.

[12] G.R. No. 132841, June 21, 1999.

[13] Villamor vs. Lacson, 12 SCRA 418, 423 (1964).

[14] Annex "E" of the Petition, Rollo, p. 81.

[15] Jacinto v. Court of Appeals, supra at 682.

[16] 18 SCRA 223 (1966).

[17] 19 SCRA 600 (1967).

[18] SEC. 47. Disciplinary Jurisdiction.

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(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 a fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the (Civil Service) 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.

[19] Jacinto v. Court of Appeals, *supra* at 680.

[20] G.R. No. 131012, April 21, 1999.

[21] *Id.*, at 12-13.

[22] 282 SCRA 256 (1997).

[23] *Id.* at 273.

[24] *Esber v. Sto. Tomas*, 225 SCRA 664 (1993); *Cebu Stevedoring Co., Inc. v. Regional Director/Minister of Labor*, 168 SCRA 315 (1988); *B. Sta. Rita & Company, Inc. v. Arroyo*, 168 SCRA 581 (1988); *Rosales v. Court of Appeals*, 165 SCRA 344 (1988); *Sumpang v. Inciong*, 137 SCRA 56 (1985).

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