GUALBERTO CASTRO, PETITIONER, VS. HONORABLE SECRETARY RICARDO GLORIA IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, RESPONDENT.

G.R. No. 132174. August 20, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-132174/

SANDOVAL-GUTIERREZ, J.:

The principle of non-exhaustion of administrative remedy is not an iron-clad rule. There are instances when it may be pierced and judicial action may be resorted to immediately.

The present case is one illustration.

Sought to be set aside in this petition for review on certiorari are the: (a) Decision[1] dated November 20, 1997 of the Regional Trial Court, Branch 60, Barili, Cebu dismissing Gualberto Castro's petition for mandamus; and b) Order[2] dated January 5, 1998 denying his motion for reconsideration.

The factual and legal antecedents are as follows:

Porfirio Gutang, Jr. filed with the Department of Education, Culture and Sports (DECS) a complaint for disgraceful and immoral conduct against petitioner Gualberto Castro, a teacher in Guibuangan Central School, Barili, Cebu. It was alleged that he has an illicit affair with Gutang's wife, petitioner's co-teacher at the same school.

After hearing or on August 28, 1984, the DECS Regional Office VII, through Assistant Superintendent Francisco B. Concillo, rendered a decision declaring petitioner guilty of the offense charged. He was meted the penalty of dismissal from the service.[3] The DECS Central Office affirmed Concillo's decision in an Indorsement dated March 25, 1986.[4]

On July 21, 1986, petitioner filed a motion for reconsideration. Instead of resolving the motion, the DECS Central Office directed the School Division of Cebu to comment on the motion.[5] The School Division Superintendent recommended that the motion be resolved favorably. However, the recommendation was opposed by the DECS Region VII.[6]

Thereafter, in his letters dated November 5, 1988 and July 19,1990, petitioner asked the incumbent DECS Secretary to resolve his motion for reconsideration. But his letters remained unheeded, thus, on October 4, 1995, petitioner filed with the DECS Central Office a "Motion for Review Setting Aside/Modifying the Decision of Regional Director of DECS Region VII."[7] DECS Secretary Ricardo Gloria (respondent) referred the motion to the Regional Director of Region VII for comment. On January 3, 1996, Regional Director Eladio C. Dioko issued a 2nd Indorsement sustaining the decision of Assistant Superintendent Concillo, thus:

> "This Office sustains former Director Concillo's decision that respondent Castro is guilty of Disgraceful and

> Immoral Conduct but posits the belief that the proper penalty as provided by law be meted out for him. In the Honorable Secretary is vested by law the power to review, reaffirm, modify or reverse decisions of a lower office.[8]

In his 3[rd] Indorsement dated March 6, 1996, respondent Secretary denied petitioner' s motion for review.[9]

Thrice thwarted, petitioner filed a petition for mandamus with the Regional Trial Court, Branch 60, Barili, Cebu, imploring that judgment be rendered ordering respondent Secretary or anyone who may have assumed the duties and functions of his office (1) to reduce his penalty from dismissal to one (1) year suspension; 2) to consider the one (1) year suspension as already served considering that he has been out of the service for more than ten (10) years; 3) to reinstate him to his former position; and 4) to pay is back salaries.[10] On November 20, 1997, the trial court rendered the herein assailed decision dismissing the petition on the ground of non-exhaustion of administrative remedies. It ruled that petitioner should have appealed to the Civil Service Commission before coming to court, thus:

> "Considering that the Civil Service Commission has the power to review on appeal the orders or acts of respondent, petitioner has failed to exhaust administrative remedies. Non-exhaustion of administrative remedies implies absence of cause of action. Where a remedy is available within the administrative machinery, this should be resorted to before recourse can be made to the courts. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. (Vidad v. RTC of Negros Oriental, Branch 42, 227 SCRA 271).
>
> Mandamus - If appeal or some other equally adequate remedy is still available in the ordinary course of law, the action for MANDAMUS would be improper. Sherman Vs. Horilleno, 57 Phil. 13; Fajardo Vs. Llorente, 6 Phil, 426; Paquio Vs. Del Rosario, 46 Phil. 59; Manalo v. Paredes, 47,938; Castro Revilla Vs. Garduno, 53 Phil. 934; Rural Transit Co. Vs. Teodoro, 57 Phil. 11.
>
> Special Civil Actions against administrative officers should not be entertained if superior administrative officers could grant relief. Cecilio vs. Belmonte, 48 Phil. 243, 255.
>
> From the facts it is clear that the penalty of dismissal from the service was erroneously imposed upon petitioner. However, certiorari is the remedy to correct errors of judgment which are grave and arbitrary and not mandamus.
>
> Mandamus will not lie to order the reinstatement of the petitioner in his former position as Elementary Grades Teacher as it was not yet established that he is entitled to or has legal right to the office.
>
> In the case of Manalo vs. Gloria, 236 SCRA 130, the petitioner's claim for "backwages" could be the appropriate subject of an ordinary civil action as mandamus applies when there is no other plain, speedy and adequate remedy in the ordinary course of law.
>
> In the case at bench, the Court after a judicious study and analysis on the case, has no other alternative than to DENY the present petition for lack of merit.
>
> SO ORDERED."[11]

Petitioner filed a motion for reconsideration but was denied.

Hence, the present petition for review on certiorari.

Petitioner insists that, "when the question to be settled is purely a question of law, he may go directly to the proper court so that he can have proper redress." For its part, the Office of the Solicitor General (OSG) contends that petitioner's adequate remedy was to appeal the decision of respondent Secretary to the Civil Service Commission,

pursuant to the provisions of Executive Order No. 292. Since petitioner failed to exhaust administrative remedies, his petition must be dismissed for lack of cause of action. Also, the OSG argues that the remedy of mandamus to compel payment of back salary does not lie unless petitioner's right thereto is well defined. This is based on the general proposition that a public official is not entitled to any compensation if he has not rendered any service.

The petition is impressed with merit.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of a cause of action,[12] which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.[13]

The doctrine is not absolute. There are instances when it may be dispensed with and judicial action may be validly resorted to immediately. Among these exceptions are: 1) When the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; and 10) in quo warranto proceedings.[14]

Truly, a petition for mandamus is premature if there are administrative remedies available to petitioner.[15] But where the case involves only legal questions, the litigant need not exhaust all administrative remedies before such judicial relief can be sought.[16] In Cortes v. Bartolome,[17] a case involving a petition for mandamus, we ruled that "while it may be that non-judicial remedies could have been available to respondent in that he could have appealed to the then Secretary of Local Government and Community Development and thereafter to the Civil Service Commission, the principle of exhaustion of administrative remedies need not be adhered to when the question is purely legal." This is because issues of law cannot be resolved with finality by the administrative officer. Appeal to the administrative officer would only be an exercise in futility.[18]

Thus, in the ultimate, the resolution of this case hinges on whether or not the following is a question of law or a question of fact - Is dismissal from the service the proper penalty for the 1[st] offense of disgraceful and immoral conduct?

It is settled that for a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. And the distinction is well known. There is a question of law when the doubt or differences arise as to what the law is on a certain state of facts. There is a question of fact when the doubt or differences arise as to the truth or the falsehood of alleged facts.[19]

In the case at bench, petitioner no longer disputes the administrative finding of his guilt for the offense of disgraceful and immoral conduct. It is settled and final insofar as he is concerned. What petitioner only impugns is the correctness of the penalty of "dismissal from the service." He is convinced that the proper penalty for the first offense of disgraceful and immoral conduct is only suspension from the service. Undoubtedly, the issue here is a pure question of law. We need only to look at the applicable law or rule and we will be able to determine whether the penalty of dismissal is in order.

We find for petitioner.

Petitioner has all the reasons to seek the aid of this Court since it has been clearly established by evidence that he is a first time offender. Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292 (Otherwise known as the Administrative Code of 1987 and other Pertinent Civil Service Laws)[20] provides:

> "Sec. 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and

> light depending on the gravity of its nature and effects of said acts on the government service.
>
> The following are grave offenses with its corresponding penalties:
>
> x x x x x x
>
> (o) Disgraceful and immoral conduct <1st Offense, Suspension for six (6) months and one day (1) day to one (1) year; 2[nd] Offense, Dismissal.>"

As correctly pointed out by petitioner, the proper penalty for the 1[st] offense of disgraceful and immoral conduct is only suspension for six (6) months and one (1) day to one (1) year. In fact, this has been the consistent ruling of this Court. In Aquino v. Navarro,[21] a secondary guidance councelor in a public high school, was merely suspended for disgraceful and immoral conduct. In Burgos v. Aquino,[22] the Court suspended a court stenographer for six months for maintaining illicit relations with the complainant's husband and for perjury in not disclosing in her personal information sheet she has a daughter as a result of that relationship. Similarly, in Nalupta Jr. v. Tapec,[23] a deputy sheriff was suspended for six months and one day for having a relationship with a woman other than his wife by whom he has two children. Thus:

> The act of respondent of having illicit relations with Consolacion Inocencio is considered disgraceful and immoral conduct within the purview of Section 36 (b) (5) of Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines, for which respondent may be subjected to disciplinary action. Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission has categorized disgraceful and immoral conduct as a grave offense for which a penalty of suspension for six (6) months and one (1) day shall be imposed for the first offense, while the penalty of dismissal is imposed for the second offense. (Emphasis supplied)
>
> Inasmuch as the present charge of immorality against respondent constitutes the first charge of this nature, the Court shall at this instance suspend respondent for six (6) months and one (1) day.

Again, in the 1997 case of Ecube-Badel v. Badel,[24] we imposed the penalty of suspension for one (1) year without pay against respondent David Badel for his first offense of immorality.

It is worthy to note that even DECS Regional Director Eladio C. Dioko stated in his 2[nd] Indorsement dated January 3, 1996, that while he sustains Director Concillo's decision, "the proper penalty as provided by law (should) be meted out for him." The Regional Trial Court also echoed the same sentiment, thus:

> "From the facts, it is clear that the penalty of dismissal from the service was erroneously imposed upon petitioner. However, certiorari is the remedy to correct errors of judgment which are grave and arbitrary and not mandamus."

Anent petitioner's prayer for the payment of back salaries, we find it to be without legal basis.

The issue regarding payment of back salaries during the period that a member of the civil service is out of work but subsequently ordered reinstated is settled in our jurisdiction. Such 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. However, if the employee is not completely exenorated of the charges [25] such as when the penalty of dismissal is reduced to mere suspension, he would not be entitled to the payment of his back salaries. In Yacia v. City of Baguio,[26] the decision of the Commissioner of Civil Service ordering the dismissal of a government employee on the ground of dishonesty was immediately executed pending appeal. But, on appeal, the Civil Service Board of Appeals modified that penalty of dismissal to a fine equivalent to six months pay. This Court ruled that the employee's claim for back wages, for the period during which he was not allowed to work because of the execution of the decision of the Commissioner, should be denied.

The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, he shall earn. Since petitioner did not work during the period for which he is now claiming salaries, there can be no legal or equitable basis to order the payment of such salaries.[27]

Thus, we reduce the penalty of dismissal imposed upon petitioner to suspension for a period of one year without pay. Considering that he has been out of the service for quite a long time, we feel he has been sufficiently punished for his offense. We, therefore, order his reinstatement.

WHEREFORE, the petition is hereby GRANTED. The Regional Trial Court's Decision dated November 20, 1997 and Order dated January 5, 1998 are SET ASIDE. The penalty of dismissal imposed upon petitioner is reduced to one (1) year suspension from office without pay. In view of the length of time petitioner has been out of the service, we consider the penalty of suspension to have been fully served. He must, therefore, be REINSTATED to office immediately.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

---

[1] Penned by Honorable Judge Ildefonso B. Suerte, Rollo pp. 9-12.

[2] Rollo, pp. 17-18.

[3] Rollo, pp.9-12.

[4] Rollo, p. 32

[5] Rollo, p.10.

[6] Rollo, p. 33.

[7] Rollo, p. 10.

[8] Ibid.

[9] Ibid.

[10] Rollo, p. 9.

[11] Rollo, p. 11-12.

[12] Pineda v. Court of First Instance of Davao, 1 SCRA 1020 (1961); Atlas Consolidated Mining and Development Corporation v. Mendoza, 2 SCRA 1064 (1961); Pestanas v. Dyogi, 81 SCRA 574 (1978); Aboitiz and Co. Inc. v. The Collector of Customs, 83 SCRA 265 (1978); Abe-Abe v. Manta, 90 SCRA 524 (1979).

[13] Sunville Timber Products,Inc. v. Abad, 206 SCRA 482 (1992).

[14] ibid.

[15] Perez v. City Mayor of Cabanatuan, 3 SCRA 432 (1961).

[16] Espanol v. Chairman, Philippine Veterans Administration 137 SCRA 314 (1985).

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[17] 100 SCRA 1 (1980).

[18] Madrigal v. Lecaroz, 191 SCRA 20 (1990).

[19] Macawiwili Gold Mining and Development Co. Inc. v. Court of Appeals, 297 SCRA 602 (1998); Medina v. Asistio, Jr. 191 SCRA 218 (1990); Ramos v. Pepsi-Cola Bottling Co. of the Philippine Island, 19 SCRA 289 (1967)

[20] Resolution No. 91-1631

[21] 135 SCRA 361 (1985).

[22] 249 SCRA 504 (1995).

[23] 220 SCRA 505 (1993).

[24] 273 SCRA 320 (1997).

[25] Bangalisan v. Court of Appeals, 276 SCRA 619 (1997); Alipat v. Court of Appeals, 308 SCRA 781 (1999).

[26] 33 SCRA 419 (1970), cited also in Bangalisan.

[27] Sales v. Mathay, Sr. 129 SCRA 180 (1984); Reyes v. Hernandez, 71 Phil. 397 (1941).

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.