

CARMEN ALIPAT, LEA BUENAFE FRANCISCA CAISIP, LETICIA CALIBOSO, DOLORES CANANAN, CONCHITA CARIAGA, ARLENE DALANGIN, BERNARDITA DALANGIN, EVELYN DE LA PISA, CRISTINA DE RAMOS, AR...

G.R. No. 132841. June 21, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before this Court is a Petition for Review on Certiorari which seeks to review and set aside the Decision dated March 26, 1997 and the Resolution dated February 26, 1998 of the Former Special Seventeenth Division[1] of the Court of Appeals in CA-G.R. SP No. 38312.

Petitioners are public school teachers belonging to different public schools in Metro Manila. On the basis of the reports submitted by their respective school principals that petitioners were among those who participated in the "mass actions" held by public school teachers on September 17-19, 1990 and who defied the return-to-work orders later issued by then DECS Secretary Isidro Cariño, the latter filed individual administrative complaints charging each one of them with "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)" allegedly in violation of Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines, and placed petitioners under preventive suspension.[2]

Petitioners were given time to submit their respective answers but they failed to do so for which reason the DECS Secretary considered such failure as a waiver on their part to answer the charges against them. An investigation was conducted by a Committee formed by the respondent Secretary. Thereafter, the respondent Secretary rendered judgment finding herein petitioners guilty as charged and dismissed them from the service "effective immediately." Petitioners appealed to the Merit and Systems Protection Board (MSPB) which dismissed their appeal.[3]

On appeal, the Civil Service Commission, in uniformly worded resolutions, set aside the MSPB decision but found petitioners guilty instead of "violation of reasonable office rules and regulations" and were meted out the penalty of reprimand. They were ordered automatically reinstated to their former positions.[4]

The motions for reconsideration of petitioners were denied for lack of merit.

The matter was elevated to the Court of Appeals in CA-G.R. SP No. 38312 where the following issues were raised:

- "1. Whether or not the CSC could legally impose the penalty of reprimand on the petitioners (except Bicodo) on the basis of their failure to file their applications for leave;

"2. Whether or not the CSC could legally deny petitioners their right to back wages covering the time that they were not allowed to teach; and

"3. Whether or not the CSC could dismiss outright the appeal of petitioner Bicodo."

A decision[5] was rendered on March 26, 1997 wherein the Court of Appeals stated:

"The formal charges against petitioners included grave misconduct and neglect in the performance of duty which are grounds for the imposition of preventive suspension under the aforequoted Section 51 of Book V, Title I, Subtitle A of the Administrative Code of 1987. That they were found guilty only of violation of reasonable office rules and regulations by respondent CSC did not render their preventive suspension invalid for what is important in the proper exercise of the power is the gravity of the charges and not the eventual result of the investigation.

That the order of dismissal was immediately executed is authorized by Section 47(4), Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292 (Administrative Code of 1987) which provides:

'(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.'

It is settled that an employee who is reinstated to his former position may only be paid his back salaries if the employee concerned was found innocent of the charges proffered against him or if it be shown that the suspension or dismissal was unjustified on the general proposition that a public official is not entitled to any compensation if he has not rendered any service (*Sales v. Mathay, Jr.*, 129 SCRA 180, 183 [1984]). Respondents were not found to be innocent. And their suspension was not unjustified.

Respondent CSC's modification of the penalty to reprimand did not render the order of dismissal by respondent Secretary illegal, as petitioners would like Us to believe. For, by their questioned actions, it cannot be denied that petitioners committed, at the very least, conduct grossly prejudicial to the best interest of the service." [6]

The dispositive portion of the judgment reads:

"WHEREFORE, finding no grave abuse of discretion on the part of respondent Civil Service Commission insofar as the first 56 Resolutions are concerned, the same are hereby AFFIRMED. But finding reversible error insofar as CSC Resolutions Nos. 94-0197, 95-1494 and 954624 affecting petitioner Romeo T. Bicodo are concerned, the same are hereby SET ASIDE, and respondent Civil Service Commission is hereby directed to act on Bicodo's appeal."

Petitioners filed a Motion for Partial Reconsideration of the aforesaid decision reiterating their prayer for backwages on the ground that they have been "exonerated" citing the case of *Bangalisan vs. Court of Appeals* (G.R. No. 124678, July 31, 1997). Said motion was denied for lack of merit in the Resolution dated February 26, 1998.[7]

Hence, the instant petition.

Petitioners allege that "to simplify the issue and speed up adjudication," they will "no longer insist on their prayer for exoneration" but will only pursue their claim for back wages.[8] They are of the view that the ruling in the cases of *Bangalisan, et al. vs. Court of Appeals*[9] and *Jacinto vs. Court of Appeals*[10] are applicable to them because the records of their cases show that "they were found innocent of the charges" and "their suspension was unjustified" and that on the basis of the CSC Resolution No. 93-162 they were found innocent of the charges which caused their dismissal.[11] In addition, they aver that they were denied due process as the committee that

conducted the investigation of the charges against them was not constituted in accordance with law and thus their dismissal by then Secretary Cariño was null and void citing the case of Fabella, et al. vs. Court of Appeals.[12]

In their Comment[13] to the petition, respondents allege that the petition is "fatally infirm" in that petitioners impleaded the Court of Appeals as a party respondent in violation of Section 4, Rule 45 of the 1997 Rules of Civil Procedure and that under Section 5 of the same Rule, petitioners' failure to comply with Section 4 thereof shall be a sufficient ground for the dismissal of the instant petition. Respondents further aver that petitioners are public school teachers covered by the Civil Service Law (P.D. No. 807) who do not have the right to strike and to bargain collectively. They further argue that petitioners were never found innocent of the charges lodged against them as they were found by the Court of Appeals guilty of joining an illegal strike disruptive of the education of the school children and were likewise liable for their failure to file their respective applications for leave of absence which failure constitutes a valid ground for disciplinary action. Anent the issue on backwages, respondents contend that petitioners are not entitled to the payment of backwages as the government cannot be made to pay back salaries during the time when petitioners were not rendering any service to the public. Respondents pray for the dismissal of the petition.

In their Reply to Comment, petitioners insist that the finding of the former Secretary Cariño that petitioners participated in the mass action/illegal strike on September 19-21, 1990 was set aside by the Civil Service Commission which ruled that the sole offense of petitioners was their failure to "file application for leave corresponding to the period September 18-21, 1990". Under the rulings in the Bangalisan and Jacinto cases and more recently that in Fabella vs. Court of Appeals (282 SCRA 256), the petitioners are entitled to backwages.

We find no merit in the instant petition.

It has long been settled that the mass actions of September/October 1990 staged by Metro Manila public school teachers amounted to a strike in every sense of the term, constituting, as they did, "concerted and unauthorized stoppage of or absence from, work which it was the teachers' duty to perform, undertaken for essentially economic reasons." [14] The claim that the teachers involved in the 1990 mass actions were merely exercising their constitutional right to peaceful assembly was already rejected in Rolando Gan vs. Civil Service Commission.[15]

This Court has also resolved the issue of whether back wages may be awarded to the teachers who were ordered reinstated to the service after the dismissal orders of Secretary Cariño were commuted by the Civil Service Commission to six (6) months' suspension. The issue was resolved in the negative in Bangalisan vs. Court of Appeals[16] on the ground that the teachers were neither exonerated nor unjustifiably suspended. The Bangalisan case also ruled that the immediate implementation of the dismissal orders, being clearly sanctioned by law, was not unjustified. The Court held that as regards the payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, the payment of back wages may be decreed if "he is found innocent of the charges which caused the suspension and when the suspension is unjustified".

Citing the Bangalisan ruling, this Court in Jacinto vs. Court of Appeals[17] held that when the teachers have given cause for their suspension - i.e., the unjustified abandonment of classes to the prejudice of their students - they were not fully innocent of the charges against them although they were eventually found guilty only of conduct prejudicial to the best interest of the service and not grave misconduct or other offense warranting their dismissal from the service; "being found liable for a lesser offense is not equivalent to exoneration." [18]

In both the Bangalisan and Jacinto cases, this Court granted back wages to Rodolfo Mariano and Merlinda Jacinto in view of the absence of proof that the petitioners were involved in illegal mass actions which caused prejudice to the school system. In the case of Rodolfo Mariano, the Civil Service Commission made a finding that he was

not involved in "mass actions" but was absent because he was in Ilocos Sur to attend the wake and internment of his grandmother. In the case of Merlinda Jacinto, there was a finding that there was no proof that she joined the unlawful mass actions.

Petitioners in this case base their prayer for backwages on the assertion that they were "exonerated" of the charges against them and argue that the respondent Court of Appeals "made the terrible mistake of thinking that a government employee must be completely exonerated or else he cannot be entitled to backwages."

The issue then boils down to whether or not the petitioners were found to have participated in the mass action. This is a question of fact that was resolved affirmatively by the Civil Service Commission on the basis of the "Common Memorandum of Appeal" filed by the teachers which alleged:

"Appellants do not, however, deny that, as found in the decision of Cariño, appellants are absent from classes for a certain number of days from one day to over a week."

"The absence of some Appellants was due to sickness, or for other satisfactory personal reasons or because they attended certain activities of the Department of Education, Culture and Sports. But for the majority of Appellants they admit that they were absent from classes for a few days because they were engage(d) in peaceful assembly to petition the government for redress of grievances."

The Commission held in various appeals that the excuses of being allegedly sick or on official business were not supported by the evidence on record.[19]

In this case, the respondent Court of Appeals upheld the finding of the Civil Service Commission that petitioners were correctly considered as having participated in the mass actions.

The said factual findings are generally deemed conclusive on this Court, which is not a trier of facts.[20] Moreover, our own examination of the petition and the annexes yields no basis for disturbing or reversing the factual findings of the Court of Appeals that the 28 petitioners participated in the mass actions of September 17-19, 1990. Reliance on the statement in the Resolution No. 93-162 that "a careful and judicious review of the records of the case would show not an iota of evidence to substantiate the conclusion that these respondents participated in the mass action which was then popularly reported in the newspaper as a teachers' strike", is unavailing, because the said Resolution refers to five teachers of the Emilio Aguinaldo Integrated School, Fely Ilarina, et al., who were the appellants therein and the statement was made in connection with the hearings before the DECS; the said appellants Ilarina, et al., subsequently admitted at the hearings at the Merit Systems Protection Board (MSPB) that they were participants in that mass action held at Liwasang Bonifacio on September 17, 18, 19, and 20, 1990, thus curing the absence of evidence on this issue during the DECS hearings.

There is no specific allegation, much less reference to any evidence, in the instant petition that would traverse the finding of fact that petitioners participated in the mass actions as admitted at the hearings before the MSPB and in their Common Memorandum on Appeal to the Civil Service Commission. Hence, the ruling in the case of Rodolfo Mariano in the Bangalisan case and of Merlinda Jacinto in the Jacinto case cannot be applied. Petitioners were not found innocent of the charge that they participated in the illegal strike.

The Court of Appeals did not err in finding that petitioners were not "completely exonerated". The Bangalisan case denied payment of backwages to the co-petitioners of Rodolfo Mariano because they were not "completely exonerated" of the charges against them; they were found to have participated in the mass actions but the penalty was reduced to suspension. Similarly in the Jacinto case, the petitioners therein, except Merlinda Jacinto, were denied back salaries because they were not "fully innocent" of the charges against them because they had given cause for their suspension by their unjustified abandonment of classes to the prejudice of their students. As stated

earlier, being found liable for a lesser offense is not equivalent to exoneration from the original complaint against the concerned officer or employee.[21]

Petitioners likewise invoke the ruling in the case of *Fabella vs. Court of Appeals*[22] wherein this Court upheld the finding of the Court of Appeals and that of the Regional Trial Court of Quezon City in Civil Case No. 60675 to the effect that plaintiffs therein, who are teachers of the Mandaluyong High School, and who were charged and preventively suspended for participating in the teachers' walk-out and strikes were deprived of due process in the administrative hearing conducted by the investigating committee appointed by the DECS Secretary Cariño to hear the charges. It was held that the investigating committee, as constituted, did not include as member a representative of the provincial or national teachers' organization as required under the Magna Carta for Public School Teachers (RA No. 4670) and thus the proceedings undertaken by the committee were necessarily void.

In the *Fabella* case, petitioners therein promptly went to court to seek injunctive relief against the DECS administrative proceedings on the ground of absence of due process in the hearings and this was the only issue that was finally set at rest by this Court.

On the other hand, petitioners herein have specifically limited the issue in this appeal to the right to receive backwages in light of the rulings in the cases of *Bangalisan* and *Jacinto*. While petitioners also contend that their right to due process was violated in the DECS proceedings, which position was apparently upheld also by the Civil Service Commission,[23] the Commission ruled that the deficiencies and omissions in the DECS hearings were "cured in the formal hearings conducted by the Merit Systems Protection Board." This ruling of the Civil Service Commission is not challenged in the present petition, which as above stated, confines the issue to the claim for back wages in the light of the *Bangalisan* and *Jacinto* cases.

WHEREFORE, PREMISES CONSIDERED, the petition for review on certiorari is hereby DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, and Ynares-Santiago, JJ., concur.

Puno, J., abroad on official business.

Panganiban, J., on leave.

[1] penned by Justice Conchita Carpio Morales, with Justices Fermin A. Martin, Jr. and Salvador J. Valdez, Jr., concurring.

[2] pp. 2-3, CA-Decision, pp. 41-42, Rollo.

[3] pp. 3, *supra*.

[4] Resolution No. 95-1093 dated February 17, 1995, Annex "C" of the Petition, pp. 59-60, Rollo; p. 4, CA-Decision, *supra*.

[5] pp. 40-52, Rollo.

[6] pp. 11-12, thereof, pp. 50-51, Rollo.

[7] pp. 54-58, Rollo.

[8] par. 23, Petition, p. 24, Rollo.

[9] 276 SCRA 619.

[10] 281 SCRA 657.

[11] pp. 12-13, Petition, pp. 26-27, Rollo.

[12] G.R. No. 110379, November 28, 1997, 282 SCRA 256.

[13] pp. 93-129, Rollo.

[14] Manila Public School Teachers Association vs. Laguio, Jr., G.R. No. 95445, August 6, 1991 and Alliance of Concerned Teachers (ACT) vs. Cariño, G.R. No. 95590, August 6, 1991, 200 SCRA 323.

[15] G.R. Nos. 110717 & 110721-22, December 14, 1993; Bagana vs. Court of Appeals, G.R. No. 126567, Minute Resolution dated September 9, 1997.

[16] G.R. No. 124678, July 31, 1997, 276 SCRA 619.

[17] 281 SCRA 657.

[18] at p. 682.

[19] Resolution No. 95 1093; Resolution No. 95 1434; Resolution No. 95 1122.

[20] Villanueva vs. Court of Appeals, 267 SCRA 89; Estonina vs. Court of Appeals, 266 SCRA 627; Del Mundo vs. Court of Appeals, 252 SCRA 432.

[21] Jacinto vs. Court of Appeals, *supra*, at p. 682.

[22] 282 SCRA 256.

[23] Resolution No. 93-162, Annex "E" of the petition, p. 63, Rollo.

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