

ANICETO MADRID, PETITIONER, VS. THE AUDITOR GENERAL AND/OR THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 13523. May 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition for review of the decision of the Auditor General, denying petitioner's claim for back salary during the period of his alleged illegal separation from the government service.

The essential facts of the case are not disputed and are stated in the decision of the Auditor General as follows:

"The records disclose that Mr. Madrid (herein petitioner), at the outbreak of the last war, was a permanent lighthouse keeper at Ungay Point, Rapu-Rapu, Albay, with a compensation of P720 per annum. After the liberation, or more specifically on August 10, 1945, he was reappointed to his pre-war position in an acting capacity.

"On March 14, 1946, a criminal information, for treason, was filed against him in the People's Court. Upon dissolution of this Court, the case was transferred to the Court of First Instance of Albay.

"On April 30, 1946, the Acting Collector of Customs sent Mr. Madrid a letter informing him that his services, as lighthouse keeper of the Bureau of Customs were, on that date, terminated—quoting the pertinent portion of a communication from the Office of the Solicitor General, substantially to the effect that 'the record file of the CIC revealed the existence of derogatory information concerning Mr. Aniceto Madrid, Acting Lightkeeper at Ungay Point, Rapu-Rapu, Albay.'

"In connection with termination of the services of Mr. Madrid on April 30, 1946, that Office, in a 2nd indorsement dated June 18, 1946, stated that 'Mr. Madrid's separation on the strength of the report of the Solicitor General is not irregular.' On March 1, 1951, the Court of First Instance of Albay unconditionally dismissed the treason case against Mr. Madrid for failure of the prosecution to secure the necessary evidence.

"On June 20, 1951, Mr. Madrid, thru counsel, requested for reinstatement to his former position and for payment of salary from May, 1946, in view of the dismissal by the court of the criminal charge against him. Mr. Madrid had already been reinstated in the Lighthouse Service of the Philippine Navy."

Finding that from April 30, 1946 to June 20, 1951, or for more than five years, petitioner did not take any step to bring up the matter to the proper authorities, or to contest the legality of his removal, and holding, on the authority of the decision of this Court in the cases of Mesias vs. Jover (97 Phil., 899; 51 Off. Gaz. [12] 6171) and Unabia vs. City Mayor et al., (99 Phil., 253), that for such failure he may be considered as having abandoned his office, or acquiesced to his removal and to the salary appertaining thereto, the respondent Auditor General, on September 5, 1956, handed down the decision complained of, denying his claim. Copy of that decision was sent by mail on November 29, 1956 to petitioner at 517 (Int. 1) Kahilom, Pandacan, Manila, in a letter of the Bureau of Civil Service dated November 27, 1956.

About a year later, or on November 5, 1957, petitioner asked for reconsideration of the decision denying his claim

for back salary. Holding that the decision sought to be reconsidered has already become final, the respondent Auditor General denied the request. Another request for reconsideration having been also denied, petitioner filed the present petition for review.

Petitioner's claim was, in our opinion, properly denied. According to the decisions cited by the respondent Auditor General, a person claiming right to a position in the civil service must institute the proper proceedings to assert his right within the period of one year from the date of separation, otherwise he will be considered as having abandoned his office, or even acquiesced or consented to his removal, and, therefore, not entitled to bring action for his reinstatement. (See also *Abella vs. Rodriguez*, 102 Phil., 543; 54 Off. Gaz. [9] 2879; *Eranda et al. vs. Del Rosario et. al.*, 103 Phil., 489; 54 Off. Gaz. [24] 6253; *Quingco et al. vs. Rodriguez et al.*, G. R. No. L-12144, Sept. 17, 1958; *Taborada vs. City of Cebu et al.*, G. R. No. L-11574, Oct. 31, 1958; *Pinullar vs. President of the Senate*, 104 Phil, 131; 55 Off. Gaz., 3488; *Roque et al. vs. President of the Senate*, G. R. No. L-10949, July 25, 1958.) The rationale of this doctrine, as stated in *Pinullar vs. President of the Senate*, *supra*, is that the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so.

In the present case, petitioner was not only suspended but removed or separated from his position as light-house keeper on April 30, 1946. For more than five years from that date, he did not take any step to contest the legality of his removal and exerted no efforts to have his rights restored to him. Following the ruling of this Court in the cases above cited, he is now barred from questioning the legality of his separation from the service. By his failure to promptly institute the corresponding action for reinstatement after his lay-off, he has in effect acquiesced or assented thereto. It follows that during the period of his lay-off he is not entitled to any salary.

It will also be noted that petitioner's appointment, prior to his removal, was in an acting capacity. Such being the case, his separation from the service cannot really be claimed as illegal. His appointment was by its very nature temporary and can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause. (*Mendez vs. Ganzon et al.*, 101 Phil., 48; 53 Off. Gaz. [15] 4835; *UP, et al., vs. CIR et al.*, 105 Phil., 848; 58 Off. Gaz. [8] 1536; see also *Agapuyan vs. Ledesma*, G. R. No. L-10535, April 25, 1957.)

In the light of the view we have taken of the case, it becomes unnecessary to pass upon the other questions raised by the parties.

Wherefore, the decision of the respondent Auditor-General sought to be reviewed is affirmed, without special pronouncement as to costs, petitioner having been allowed to litigate in this Court as a pauper. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.

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