

**ANACLETO ALZATE, IN HIS OFFICIAL CAPACITY AS PRINCIPAL OF
THE SOUTH PROVINCIAL HIGH SCHOOL, AGOO, LA UNION,
PETITIONER AND APPELLANT, VS. BENIGNO ALDANA, IN HIS
OFFICIAL CAPACIT...**

G.R. No. 14407. February 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Anacleto Alzate, Principal of the South Provincial High School in Agoo, La Union Province, has taken this present appeal from an order of the Court of First Instance of La Union in Civil Case No. 1308 dismissing his petition for mandamus to compel herein respondents Director of Public Schools and the Division Superintendent of Schools for La Union, to adjust his salary pursuant to the provisions of Section 4, paragraphs (a) and (b) of Republic Act No. 842, entitled Public School Salary Act of 1953. The order of dismissal is predicated on the finding that the same was premature, petitioner not having exhausted all the administrative remedies available to him.

The records show that on December 20, 1957, petitioner wrote to the respondent Director of Public Schools claiming that taking into account his 24-years service in the Bureau of Public Schools in various capacities, the last one as secondary principal, he (petitioner) was entitled under Section 4, paragraph (a) of Republic Act No. 842 to an automatic salary increase of 4 rates (1 rate for every 5 years of service) after his salary has been adjusted to the minimum, and to an additional automatic salary increase of 1 rate, pursuant to paragraph (b) of the same section and Act, for having passed the examination for Superintendent of Private Schools given by the Civil Service Commission. The Director of Public Schools, in his 2nd Indorsement dated March 10, 1958, addressed to the Division Superintendent of Schools for La Union, denied petitioner's request contending that in the adjustment of salary of secondary principals, only the actual number of years of service as such secondary principal would be considered, and as petitioner has to his credit in that capacity 9 years, 8 months and 15 days, he would be entitled only to one rate of salary increase; and since the examination taken and passed by petitioner was only for the Bureau of Private Schools, petitioner was not entitled to the benefit of paragraph (b) of the Public School Salary Act.

This indorsement of denial was received by the petitioner on April 14, 1958, On May 17, 1958, petitioner requested for a reconsideration of the aforementioned ruling, citing in support thereof an opinion of the Secretary of Justice (Op. No. 144, S-1956) that in the adjustment of salaries under Republic Act No. 842, the length of service in the educational branch of the government and not merely that in the position occupied at the time of the adjustment, should be considered. This letter for reconsideration was received by the Bureau of Public Schools on May 23, 1958. It appears that on May 30, 1958, the same has been processed by a certain Mr. Samson of the Bureau of Public Schools and a memorandum thereon was submitted to Dr. Aldana, Dr. Bernardino, and Dr. Guiang, all of the same bureau.

On June 11, 1958, petitioner, not having received any ruling on his request for reconsideration and fearing that the amount appropriated for the payment of the salary adjustment of public schools teachers and officials, if not disbursed or committed before the expiration of the fiscal year on June 30, 1958, would be reverted to the general funds of the Government, filed a mandamus proceeding in the Court of First Instance of La Union for the purpose indicated in the beginning of this opinion.

On June 27, 1958, after due hearing on the petition for a writ of preliminary preventive and mandatory injunction, the court in its order of the same date made the following observation:

"After a conscientious deliberation between the petitioner and the Representatives of the respondents with the assistance of their respective counsel, it has been agreed in open court that the Director of Public Schools shall recommend to the proper officials not later than June 30, 1958 and before the close of office hours on that date the sum of P840.00 to accounts receivable the amount being claimed by the herein petitioner and all other sums that the Director of Public Schools may believe necessary for the interest of all other school official's and teachers who may be benefited with whatever favorable decision, if any, that may be secured by the petitioner in this case. By reason of such assurance, the petitioner desisted in pressing for the resolution on his prayer for the issuance of a writ of preliminary mandatory injunction regarding the certification to accounts payable of said amount of P840.00."

Thereafter, respondents filed their motion to dismiss on the grounds that the petition stated no cause of action against respondents; that petitioner had not exhausted all administrative remedies before coming to court, and that the lower court had acquired no jurisdiction, over the case.

On July 31, 1958, the court a quo, acting on the motion to dismiss and the objection thereto, made the following observation:

"There is no question that the petitioner following the opinion rendered by the Secretary of Justice may be right in his contention that in making salary adjustments under Republic Act 842, the length of service rendered in the educational branch of the government and not merely that in the position occupied at the time of the adjustment ought to be considered. But this court believes and so holds that notwithstanding such opinion, the present action taken and filed by the petitioner is quite premature because all the administrative remedies have not as yet been exhausted."

Accordingly, the petition was dismissed without prejudice to the right of the petitioner to file an appropriate action at the opportune time.

The only question presented in this appeal is whether really the petition filed on June 11, 1958, while the Director of Public Schools was still considering petitioner's request for reconsideration of the previous ruling of March 10, 1958, stated no cause of action in view of the non-exhaustion of administrative remedies. It appears from the petition that the reason for its filing without awaiting the final action on the part of the respondent Director of Public Schools was the urgency of preventing the automatic reversion as of July 1, 1958, after the expiration of the then current fiscal year, of the sum appropriated in Republic Act No. 2042 for the adjustment of salary of public school officials and teachers pursuant to Republic Act No. 842. Petitioner contends that if he waited for the final decision on his petition for reconsideration which was not forthcoming, and in fact did not come, before June 30, 1958, whatever action may thereafter be taken by respondent, even if favorable to petitioner, would be of no avail after the reversion of the funds appropriated for the purpose of salary adjustment. Hence, he claims, that to require him to exhaust the administrative remedies would, in the circumstances of the case, in effect amount to a nullification of his claim.

There is merit in petitioner's contention. The fact that the parties had to agree and the court had to approve the agreement that the Director of Public Schools shall recommend to the proper officials not later than June 30, 1958

and before the closing of office hours on that date the commitment of the sum of P840.00 claimed by petitioner, to accounts payable in order to prevent its reversion, is a recognition by the parties as well as the court of the validity and urgency of the action taken by the petitioner-appellant. It would seem, therefore, that in the particular circumstances of the present case, petitioner had sufficient cause of action at the time of the filing of his petition on June 11, 1958, and a resort to the court without awaiting for the final decision of the administrative officers is not, in view of the special situation, premature.

Wherefore, the order appealed from is hereby set aside and the case remanded to the court of origin for further proceedings. Without costs. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Gutierrez David, J., reserves his vote.

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