JERRYBELLE L. BUNSAY, PRUDENCIO L. PERONO, MA. CORAZON NINI C. GAMO, MARY JOY S. ELERIO, JENELYN A. ALAYON, GENALYN DIANA D. MATTUS, JACQUELINE O. JERMEO, DANTE RAMOS, VIRGILIO ...

G.R. NO. 153188. August 14, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari assailing the February 22, 2002 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69134, dismissing petitioners' appeal from Resolution No. 02-0016 dated January 3, 2002 of public respondent Civil Service Commission (CSC); and the CA Resolution[2] dated April 16, 2002, denying petitioners' Motion for Reconsideration.

The antecedent facts are as stated by the CSC.[3]

Petitioners are among the 59 employees whose promotional appointments to various positions in the local government of Bacolod City were initially disapproved by the CSC-Field Office in Bacolod City[4] and the CSC Regional Office in Iloilo City.[5] On appeal, the CSC upheld the validity of their promotional appointments in Resolutions No. 01-0414, No. 01-0415 and No. 01-0416, all dated February 12, 2001.[6] These resolutions are not in dispute.

However, as said Resolutions did not provide for payment of backwages to the 59 appointees, 22[7] of them filed with the CSC a request for back pay.[8] Their request was denied by the CSC in Resolution No. 01-0872[9] dated May 3, 2001, thus:

> WHEREFORE, the request of Arsenio U. Selomandin, Jr., Jerrybelle L. Bunsay, Prudencio L. Perono, Richie A. Alvarez, Nini C. Gamo, Elmer A. Alegada, May Joy S. Elerio, Jenelyn A. Alayon, Genalyn Diana D. Mattus, Jacqueline O. Jermeo, Ariel B. Marapo, Dante C. Ramos, Melissa S. Geva, Glenda R. Espuerta, Isaac L. Tipsay, Jr., Leonora D. Diaz, Jeah A. Oppura, Edgardo S. Pajaro, Analie G. Saluta, Virgilio U. Corpus and Edwin D. Amago is hereby denied.[10]

With the exception of Ariel B. Marapo, the above-mentioned appointees filed a Motion for Reconsideration and were joined by Arc Catolico, Amy Guanzon, Elvira Lebrillo, and Ephraim Vergara,[11] who were also parties to the appeal with the CSC regarding the approval of their promotional appointments. The CSC partially granted the Motion for Reconsideration in Resolution No. 02-0016 dated January 3, 2002, to wit:

> WHEREFORE, the motion for reconsideration is hereby GRANTED IN PART. Accordingly, Civil Service Commission Resolution No. 01-0872 dated May 3, 2001 is hereby modified to the following extent:
>
> - Alegada, Espuerta, Tipsay, Jr., Diaz, Guanzon and Oppura are entitled to receive backwages from the date of the issuance of their appointments until the final approval thereof by the Commission;

- Selomandin, Jr., Bunsay, Lopez, Geva, Vergara, Catolico and Saluta are entitled to receive backwages on the basis of the Daily Time Record presented;

- Since there was no evidence submitted to prove that Perono, Alvarez, Gamo, Elerio, Mattus, Jermeo, Pajaro and Ramos are entitled to receive backwages, the request is denied;

- The backwages of Alayon, Amago and Lebrillo for the determined period were already received by them; and

- The right of Corpuz to claim backwages cannot be ascertained for lack of evidence.[12]

Herein petitioners are the 17 employees[13] whose claims for backwages were partly or wholly denied. They filed with the CA a Petition for Review under Rule 43 of the Rules of Court but their petition was dismissed in the February 22, 2002 CA Resolution assailed herein, which states:

Upon a perusal of the present petition, We note that the same suffers from the following infirmities, to wit:

- Copy of CSC Resolution No. 01-0872 dated May 3, 2001 as well as the copy of the motion for reconsideration thereof are nowhere appended thereto; (Sec. 6, par. (c), Rule 43 of the 1997 Rules of Civil Procedure, as amended); and

- Absence of the required explanation on why personal service upon the respondents was not resorted to pursuant to Sec. 11, Rule 13 of the 1997 Rules of Civil Procedure, as amended. Strict compliance with this rule is mandated. (Vide: Solar Team Entertainment, Inc. vs. Ricafort, 293 SCRA 661); and for which, We hereby RESOLVED to DISMISS this petition outright.

SO ORDERED.[14]

They filed a Motion for Reconsideration[15] and supplied the required documents;[16] still, the CA denied their motion in the questioned Resolution of April 16, 2002.[17]

Petitioners took the present recourse on the following grounds:

I.
The Court of Appeals denied justice to petitioners and gravely abused its discretion when it dismissed petitioners' appeal based on minor and harmless technical grounds, thereby denying them the right and opportunity to have their case determined on the merits free from constraints of technicalities.

II.
The Court of Appeals gravely abused its discretion in not passing upon the merits of the petition for review thereby denying petitioners of just and valid relief and in hypothetically affirming the no work no pay principle adopted by Respondent Commission which served as a basis of the latter in granting of different reliefs to petitioners which is not only discriminatory but likewise violative of the Constitutional guarantee of equal protection of laws.[18]

The City of Bacolod filed a Manifestation[19] with the Court stating that it is unable to prepare a memorandum for lack of sufficient knowledge of the facts and issues of the case. Public respondent CSC, through the Office of the Solicitor General, filed its Comment[20] and Memorandum.[21]

The petition is meritorious.

Judicial policy dictates that courts ensure the full adjudication of the merits of an appeal. Cases should be determined on the merits, after giving full opportunity to all parties for the ventilation of their causes and defenses, rather than on technicality or some procedural imperfections.[22] As the Court expounded in Aguam v. Court of Appeals, [23] it is more prudent for a court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice.

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Petitioners are deserving of such indulgence. On motion for reconsideration, they supplied the deficiencies of their petition and offered a plausible explanation for their earlier lapse. Their effort constituted substantial compliance with the requirement that relevant or pertinent documents be submitted along with the petition, and called for the relaxation of procedural rules;[24] more so when they have already prevailed in the main case before public respondent, which approved their promotional appointments. To rebuff their claim for backwages on a technicality would be to take with the left hand what the right hand has given. In Constantino-David v. Pangandaman-Gania,[25] the respondent's tardy and deficient appeal was given due course to afford her full redress from her wrongful dismissal and to serve the broader interests of justice.

The CA in the instant case would have served the ends of justice had it reinstated petitioners' appeal and resolved the petition on the merits. In dismissing the petition, the CA committed a grave reversible error.

The principal issue that remains unanswered is whether petitioners are entitled to payment of backwages. If in the affirmative, the next question is: what is the exact amount that each of the petitioners is entitled to? To resolve the latter question will require assessment of the evidence presented before the CSC; or, if necessary, the reception of further evidence before the CA which is within its competence under Section 9, second part of paragraph (3) of Batas Pambansa Blg. 129, as amended.[26]

Instead of outrightly remanding the case to the CA for the determination of the factual questions to avert further delay as well as for the guidance of the parties and the CA, the Court will resolve the principal issue, as it involves a pure question of law.

When public respondent first denied the claims for backwages of all the 22 appointees, including petitioners, it stringently applied the policy of "no work, no pay," thus:

> The Commission finds no legal basis to grant the request for back salaries. It is a well-settled principle that compensation is paid only for services actually or constructively rendered. Considering that no evidence was submitted by Selomandin, Jr., et al., Vergara, et al., and Maculada, et al., that they rendered service to the government from the time the appointments were issued to them until approval of said appointments, granting them backwages would in effect be unjustly enriching them at the expense of taxpayer's money.
>
> It should be noted that an appointee is entitled to receive salaries for the position to which he was appointed to without awaiting for the approval of said appointment by the Commission provided he assumed the duties of said position (CSC Memorandum Circular No. 40, Series of 1998). In the case at bar, while Selomandin, et al. were appointed by former Mayor Leonardia, they did not actually assume and discharge the functions of their respective offices. The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As you work, so shall you earn.[27]

It reconsidered the foregoing resolution only in favor of those appointees who presented evidence that they rendered actual service pending their appeal.

Petitioners impugn the foregoing ruling of public respondent on the ground that it violates the equal protection clause. They contend that the ruling in Cristobal v. Melchor[28] that an employee wrongfully dismissed should not be subject to the policy of "no work, no pay" be applied also to them, for they were prevented from reporting for work when their appointments were disapproved. Hence, as their inability to work was due to a factor beyond their control, they should be entitled to backwages even without evidence that they rendered service from the time their appointments were disapproved by the CSC- Field Office to the time public respondent set aside the disapproval.[29] In the alternative, they argue that if payment of backwages must be based on evidence, the service records they presented should be considered sufficient already, for contrary to the finding of public respondent, there are actually no gaps in their periods of service, because the effectivity of their appointments

were made to retroact to the date of issuance of those appointments.[30]

Petitioners are mistaken.

The rules on payment of backwages to employees who are reinstated after having been wrongfully dismissed or suspended are clear-cut. Backwages are due said employees, provided that their reinstatement is based on an express finding that they did not commit the imputed offense, and that their dismissal or suspension was illegal.[31] The amount of backwages that may be awarded to them shall be based on their salaries accruing from the time of their dismissal until their actual reinstatement, for a period not exceeding five years.[32] It need not depend on actual services rendered, for they are excused for their inability to work during the period of their illegal dismissal or suspension.[33] In short, they are not subject to the policy of "no work, no pay," for they were unlawfully prevented from rendering work.[34]

A different set of rules governs payment of backwages to appointees awaiting approval of their appointment.

Section 10, Rule V of the CSC Omnibus Rules (Omnibus Rules) Implementing Book V of Executive Order No. 292,[35] provides:

> Section 10. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. In no case shall an appointment take effect earlier than the date of its issuance.

Thus, to be entitled to initial compensation, said appointees must prove that they were issued appointments and have assumed the position to which they were appointed.[36] The best evidence of this would be the copies of their appointments duly issued in accordance with Section 4,[37] Rule IV of the CSC Omnibus Rules on Appointments and other Personnel Actions (Omnibus Rules on Appointment) and transmitted to the CSC for attestation[38] and the certificates of their assumption of office and their daily time records or service records.

In case of disapproval of their appointments, payment of their compensation is subject to these further provisions of Rule VI of the Omnibus Rules on Appointment:

> Section. 3. When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed.
>
> Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.
>
> If the appointment was disapproved on grounds which do not constitute violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.
>
> If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the Commission. (Emphasis added)

It is the second set of rules, specifically paragraphs 3 and 4, Section 3, Rule VI of the Omnibus Rules on Appointment, which apply to petitioners. Their employment was not terminated; their appointments were merely disapproved by the CSC-Field Office. Even then, their appointments remained effective pending appeal with the CSC. They should therefore be entitled to payment of salaries accruing from the date of issuance of their appointments to the date of the disapproval thereof; and, as they had filed a timely motion for reconsideration or appeal, from the date of initial disapproval of their appointments to the date that these are finally disapproved or

approved by the CSC, provided that petitioners are able to establish the conditions set forth in Section 10, Rule V of the Omnibus Rules; and additionally, they can show that they actually discharged the functions of their office while awaiting the outcome of their motion for reconsideration or appeal.[39] In short, given that their appointments remained effective despite initial disapproval by the CSC Regional Office, there was no obstacle to petitioners continuing to render public service; thus, there is no reason for them not to be subject to the policy of "no work, no pay."

The foregoing separate rules do not necessarily lead to an uneven treatment of claimants for backwages. There are material differences in their circumstances which necessitate the operation of distinct rules. For one who is prevented from rendering work, it would be absurd to demand evidence of actual services rendered. For one who is not prevented from performing work, it is only fair to require such evidence.

The equal protection clause does not demand absolute equality among persons; it merely requires that all persons under like circumstances and conditions be treated alike, both as to privileges conferred and liabilities enforced.[40]

This brings the Court to the corollary question: whether petitioners sufficiently proved that they rendered work as would entitle them to back pay. This question being purely evidentiary, the findings of public respondent on the matter are ordinarily binding.[41]

It is the finding of public respondent that petitioners Bunsay, Geva, Catolico, Vergara, and Saluta are entitled to backwages but only for the number of days that they actually rendered work prior to the February 12, 2001 approval of their appointments, as indicated in their daily time records (DTR).[42] As for Alayon, Amago, and Lebrillo, public respondent found them also entitled to back pay based on the number of days indicated in the DTR, but held that the latter already received payment therefor.[43] As to the claims of Perono, Alvarez, Gamo, Elerio, Mattus, Jermeo, Pajaro. Ramos and Corpus, public respondent denied the same for lack of evidence.[44]

On appeal to the CA, however, it would appear that, with the exception of petitioners Alvarez and Ramos, petitioners submitted certified true copies of personnel service records[45] issued by their respective offices, which may indicate that they rendered work continuously from the issuance of their appointments to the approval thereof on February 12, 2001.

As it came to pass, the CA was not able to consider the foregoing evidence for it merely dismissed the petition outright.

The Court is also tempted to disregard such evidence, belatedly submitted as it was.[46] However, the Court is set on giving true meaning to the policy of "no work, no pay." It cannot now simply ignore the service records of petitioners, which may show that these rank and file employees actually performed work during the periods in question, and should somehow be compensated for their efforts. To recall our ruling in Constantino-David v. Pangandaman-Gania,[47]

> To prevent respondent from claiming backwages would leave incomplete the redress of the illegal dismissal that had been done to her and amount to endorsing the wrongful refusal of her employer or whoever was accountable to reinstate her. A too-rigid application of the pertinent provisions of the Revised Uniform Rules on Administrative Cases in the Civil Service as well as the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.[48]

It is therefore settled that petitioners are entitled to back pay based on actual services rendered. However, the exact amount due each of them will have to be determined based on available evidence, and on any additional

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evidence the CA may require to address factual questions, such as the following:

- Upon initial disapproval of petitioners' appointments, were the latter reverted to their original positions and paid their corresponding salaries?

- While it is not disputed that partial payments were already received by petitioners Amago, Alayon and Lebrillo, were the other petitioners also paid their salaries from the time of the disapproval of their appointments by the CSC Regional Office to the time public respondent reversed the CSC Regional Office and approved their appointments?

- Do the entries in the service records of petitioners bearing the remarks "disapproved appointment,"[49] "w/ pending appeal CSC,"[50] "pending case"[51] or no effective appointment[52] mean that petitioners did not render work during said periods?

- With respect to petitioners whose service records show that they began rendering work only upon the approval of their appointments by public respondent,[53] does this imply that they did not render work prior to said date?

Given the purely factual questions still to be resolved, the orderly administration of justice behooves the reinstatement of the appeal with the CA for a complete and definitive determination of the exact amounts of back pay or differential pay due the individual petitioners.

WHEREFORE, the petition is GRANTED. The assailed Resolutions dated February 22, 2002 and April 16 , 2002 of the Court of Appeals are REVERSED and SET ASIDE. Let the Petition for Review docketed as CA-G.R. SP No. 69134 be REINSTATED and the issues therein be REMANDED to the Court of Appeals for further proceedings with due regard to rules on payment of backwages as defined by this Court in the text of herein Decision, and to the factual questions noted by Court.

No costs.

SO ORDERED.

Ynares-santiago, (Chairperson) Chico-Nazario,Nachura, and Reyes, JJ., concur.

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[*] The caption of the Petition for Review filed with the Court named only two (2) petitioners. The other petitioners were not named in the body of the petition. However, the Verification and Certification attached to the Petition indicate that there are fifteen (15) other petitioners, namely: MA. CORAZON NINI C. GAMO, MARY JOY S. ELERIO, JENELYN A. ALAYON, GENALYN DIANA D. MATTUS, JACQUELINE O. JERMEO, DANTE RAMOS, VIRGILIO CORPUZ, MELISSA S. GEVA, EDGARDO S. PAJARO, ANALIE G. SALUTA, EDWIN D. AMAGO, ELVIRA A. LEBRILLO, ARC R. CATOLICO, EPHRAIM VERGARA, and RICHIE ALVAREZ.

[**]The Court of Appeals is named as respondent. The same should be deleted, as it is hereby deleted from the title of the petition, in accordance with Section 4, Rule 45 of the Rules of Court.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conchita Carpio Morales (now Member of this Court) and Sergio L. Pestaño, concurring; CA rollo, p. 132.

[2] Id. at 156.

[3]Id. at 21-38.

[4]Id. at 99.

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[5]Id.

[6]Id. at 105-130.

[7] Namely, Arsenio U. Selomandin, Jr., Jerrybelle L. Bunsay, Prudencio L. Perono, Richie A. Alvarez, Nini C. Gamo, Elmer A. Alegada, Mary Joy S. Elerio, Jenelyn A. Alayon, Genalyn Diana D. Mattus, Joemarie Lopez, Jacqueline O. Jermeo, Ariel B. Marapo, Dante C. Ramos, Melissa S. Geva, Glenda R. Espuerta, Isaac L. Tipsay, Jr., Leonora D. Diaz, Jeah A. Oppura, Edgardo S. Pajaro, Analie G. Saluta, Virgilio U. Corpus and Edwin D. Amago; id. at 146.

[8] CSC Resolution, id. at 146.

[9]For some reason, Joemarie Lopez, who was among the 22 employees who requested backpay, was not mentioned in the aforementioned dispositive portion of Resolution No. 01-0872. However, the Court notes that in the dispositive portion of the subsequent Resolution No. 02-0016 of the CSC, Joemarie Lopez was among those whose claims for back pay were granted.

[10] Id. at 148.

[11] CSC Resolution, id. at 21.

[12] Id. at 37-38.

[13] Eight did not appeal from Resolution No. 02-0016 namely, Arsenio U. Selomandin and Joemarie Lopez, whose claims for backwages were partly granted, and Elmer Alegada, Glenda R. Espuerta, Isaac L. Tipsay, Jr., Leonora D. Diaz, Amy Guanzon and Jeah A. Oppura, whose claims were granted.

[14] Id. at 132.

[15] Id. at 133.

[16] Certified true copy of CSC Resolution No. 010872 (Annex "A") and Affidavit of Service and Written Explanation of Mode of Service (Annex "B"), id. at 142-143.

[17] Id. at 156.

[18] Petition, rollo, p. 25.

[19] Id. at 168.

[20] Id. at 114.

[21] Id. at 144.

[22] Jaro v. Court of Appeals, 427 Phil. 532, 548 (2002).

[23] 388 Phil. 587, 594 (2000).

[24] Padilla, Jr. v. Alipio, G.R. No. 156800, November 25, 2004, 444 SCRA 322, 327; Floren Hotel v. National Labor Relations Commission, G.R. No. 155264, May 6, 2005, 458 SCRA 128, 142; Caingat v. National Labor Relations Commission, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 147; Serrano v. Galant Maritime Services, Inc., G.R. No. 151833, August 7, 2003, 455 SCRA 992, 998.

[25] 456 Phil. 273 (2003).

[26] Section 9. Jurisdiction. - x x x (3) x x x The Court of Appeals shall have the power to try cases and conduct

hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. (Emphasis supplied)

[27] CSC Resolution, CA rollo, pp. 147-148.

[28] G.R. No. L-43203, December 29, 1980, 101 SCRA 857, 863.

[29] Petition, rollo, pp 29-34.

[30] Id. at 35-36.

[31] Civil Service Commission v. Gentallan, G.R. No. 152833, May 9, 2005, 458 SCRA 278, 286; Philippine Coconut Authority v. Garrido, 424 Phil. 904, 910 (2002); Caniete v. Secretary of Education, Culture and Sports, 389 Phil. 364, 370 (2000); Salvador v. Court of Appeals, 387 Phil. 453, 464 (2000);

[32] Marohombsar v. Court of Appeals, 382 Phil. 825, 836 (2000); Caniete v. Secretary of Education, supra note 31, at 368.

[33] Civil Service Commission v. Gentallan, supra note 31.

[34] Constantino-David v. Pangandaman-Gania, supra note 25, at 299.

[35] Administrative Code of 1987, effective November 23, 1989.

[36] Civil Service Commission v. Joson, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 787.

[37] Sec. 4. No official or employee shall be required to assume duty without being furnished with a copy of his appointment after it is issued by the appointing authority. The appointee shall acknowledge receipt of the appointment by signing on the duplicate and other copies of said appointment.

[38] Cabalitan v. Department of Agrarian Reform, G.R. No. 162805, January 23, 2006, 479 SCRA 452, 460.

[39] Civil Service Commission v. Joson, supra note 36.

[40] Fariñas v. Executive Secretary, 463 Phil. 179, 206 (2003); Executive Secretary v. Court of Appeals, G.R. No. 131719, May 25, 2004, 429 SCRA 81, 100.

[41] Gonzales v. Civil Service Commission, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 747.

[42] CSC Resolution, CA rollo, pp. 35-36.

[43] Id. at 37.

[44] Id. at 36-37.

[45] All marked Annex "B-3", id. at 84-98.

[46] Bina v. Odena, G.R. No. 163683, June 08, 2007.

[47] Supra note 25.

[48] Id. at 289.

[49] CA rollo, p. 93.

[50] Id. at 85.

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[51] Id. at 95.

[52] Id. at 87 and 97.

[53] Id. at 49, 84, 92, 94 and 95.

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