

**HON. KARINA CONSTANTINO-DAVID, HON. JOSE F. ERESTAIN, JR.,
AND HON. WALDEMAR V. VALMORES, IN THEIR CAPACITIES AS
CHAIRMAN AND COMMISSIONERS, RESPECTIVELY, OF THE CIVIL
SERVICE C...**

G.R. No. 156039. August 14, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

"A system of procedure is perverted from its proper function when it multiplies impediments to justice without the warrant of clear necessity," so says Cardozo - an observation especially apt in the instant case involving the payment of back wages and other benefits resulting from the illegal dismissal of an employee due to improper personnel and non-disciplinary action. The disquieting procedural steps risked by respondent before the Court of Appeals, the tendency of the appellate court to overlook most of them, the doggedness of the Solicitor General to venture others, when neither the court a quo nor the parties to the case appear perturbed that elementary rules of procedure were either indulgently brushed aside or subtly exploited one after the other, do not leave us ensnared in borderline technical maneuvers, or so it is said, being too impotent to address the pith of this controversy.

Respondent Zenaida D. Pangandaman-Gania is a Director II and Manila Information and Liaisoning Officer of the Mindanao State University (MSU). She has been holding this position after the confirmation of her appointment by the MSU Board of Regents on 1 June 1995.

On 2 October 1998 respondent received a copy of Special Order No. 477-P dated 28 September 1998 designating a certain Agnes Mangondato as Acting Director in her place in view of the alleged expiration of her term and was no longer allowed to report for work. She verified the status of her appointment and found out that her appointment was not submitted to the Civil Service Commission for attestation.

Respondent immediately brought the matter to the CSC for a ruling on the validity of the termination of her employment.[1] In Resolution No. 00-1265 dated 24 May 2000 the CSC upheld her dismissal for lack of attestation and prolonged absence without official leave from the time she was removed from her post in September 1998 as a result of Special Order No. 477-P.

Respondent moved for reconsideration. In Resolution No. 01-0558 dated 8 March 2001 the CSC found merit in her motion, declared her removal from office as illegal, exonerated her from the charge of being on absence without official leave and ordered her reinstatement as Director II and Manila Information and Liaisoning Officer of MSU but disallowed the payment of back salaries for the period she was not working as a result of the illegal dismissal. The CSC explained the non-payment of her back wages -

Be that as it may, the incumbency of Dr. Gania is governed by the principle of "quantum meruit" (as you work so shall you earn). In other words, her entitlement to compensation depends on her actual performance of work. Short of approval by the Commission, the appointment while already effective, by itself is not a basis for payment of salary but the assumption of duties of her office x x x x Such being the case, Dr. Gania is not

entitled to compensation for the period that she was not reporting to work.[2]

MSU moved for reconsideration of CSC Resolution No. 01-0558 dated 8 March 2001, while respondent moved for its early execution. In Resolution No. 01-1225 dated 19 July 2001, the CSC denied MSU's motion for reconsideration and ordered its President to allow respondent to assume and exercise the functions of Manila Information and Liaisoning Officer.

MSU appealed from the denial of its motion for reconsideration under Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. No. SP-66188, to the Court of Appeals, but the appellate court did not issue any restraining order or injunction to prevent the execution of the resolution on appeal.

Respondent did not seek a review of any of the resolutions of the CSC including the order denying back salaries and other benefits for the period she was out of work. She instead pursued her prayer for reinstatement but MSU refused to employ her back. Hence, she was compelled to file a second motion for the execution of CSC Resolution No. 01-0558 dated 8 March 2001, citing Sec. 82 of the Revised Uniform Rules on Administrative Cases in the Civil Service, which states that "[t]he filing and pendency of petition for review with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction."

In Resolution No. 01-1616 dated 4 October 2001 the CSC granted respondent's motion and held that "CSC Resolution No. 01-0558 dated 8 March 2001 has attained finality and must be immediately implemented," as it again ordered the MSU President to reinstate respondent.

On 8 October 2001 respondent for the first time questioned the portion of CSC Resolution No. 01-0558 dated 8 March 2001 prohibiting the payment of back wages and other benefits to her for the period that her employment was terminated, and moved for the modification of the resolution by granting her the relief prayed for.

On 29 October 2001 the Court of Appeals dismissed MSU's petition for review on the ground that the certificate of non-forum shopping was not personally signed by pertinent officers of the university but by its counsel of record.[3] MSU moved for reconsideration of the dismissal.

On 12 December 2001, there being still no action on her request to be paid her back salaries and other benefits, respondent moved for an immediate ruling thereon.

On 21 February 2002 the Court of Appeals denied MSU's motion for reconsideration of the dismissal of its petition for review for lack of merit.

On 28 February 2002 the CSC in Resolution No. 02-0321 denied respondent's motion -

Since nowhere in the records does it show that [respondent Gania] actually assumed and performed the duties of her position, it logically follows that there can be no basis for the grant of back salaries in her favor.[4]

Without the aid of an attorney, respondent appealed CSC Resolution No. 02-0321 dated 28 February 2002 to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 69668. In her petition for review, she did not mention that she did not seek a review of CSC Resolution No. 01-0558 dated 8 March 2001 which was the real object of her appeal.[5] In addition, she impleaded only the petitioners herein, Chairperson Karina Constantino-David and Commissioners Jose F. Erestrain Jr. and Waldemar V. Valmores of the CSC, but did not name as party-respondent the Mindanao State University or any of its officers.

In its Comment before the Court of Appeals, the CSC through the Office of the Solicitor General (OSG) rebuffed respondent's claim for back wages since she allegedly failed to actually assume the position of Director II and Manila Information and Liaisoning Officer of MSU. But the CSC did not assail the procedural infirmities of

respondent's petition and appeared contented to refute just the substantial arguments thereof.

On 28 October 2002 the Court of Appeals partially found merit in respondent's petition for review.[6] Apparently failing to note that respondent did not appeal from the denial of her claim for payment of back salaries in CSC Resolution No. 01-0558 dated 8 March 2001, which she found objectionable, the Court of Appeals concluded that

x x x petitioner had assumed and had been exercising the functions [at MSU] as early as June 1995, after the MSU Board of Regents approved her permanent appointment which was issued earlier x x x on April 10, 1995. It was only in September 1998, when she was terminated from service on the alleged ground of expiration of term, that she was prevented from performing the functions of her position.[7]

The Court of Appeals ruled that back wages should be paid to respondent from the time of her illegal dismissal until she was ordered reinstated by the CSC as Director II of MSU on 8 March 2001, but excluded the period after the CSC had ordered MSU to admit respondent back to work since the damages she suffered for that period were chargeable in the proper forum against the MSU President who in bad faith refused to abide by the relevant CSC resolutions.

On 3 January 2003 the OSG filed the instant petition for review under Rule 45, 1997 Rules of Civil Procedure, allegedly in behalf of the petitioners named herein, and also signed for them the verification and certification of non-forum shopping. The OSG asserted as grounds for review the principle recognizing finality to factual findings of quasi-judicial agencies as well as its puzzling statement that "[w]hile the dismissal of herein respondent was declared illegal, she was, however, not exonerated from the charges. Hence, respondent is not entitled to back wages." [8] Once again the OSG did not call attention to procedural defects in the petition of respondent before the Court of Appeals.

Respondent filed in her own behalf a Comment claiming that the CSC cannot be a party-petitioner in a case where its decision is the subject of review, citing *Civil Service Commission v. Court of Appeals*. [9] As to whether respondent actually assumed the duties of Director II, she referred not only to the finding of the Court of Appeals that she had assumed office and worked for MSU as early as June 1995 but also to the voluminous records of MSU showing that she reported for work until her illegal dismissal in September 1998. [10] She also manifested that she was reinstated to her job on 18 September 2002 while the proceedings before the Court of Appeals were ongoing although she was not paid her salary and other benefits. In another Manifestation before this Court, she affirmed that her salary as well as RATA and other benefits for the month of September 2002 were paid on 23 April 2003.

We deny the instant petition for review. It is true that respondent had lost the right to ask for the modification of CSC Resolution No. 01-0558 dated 8 March 2001 and to demand compensation for her back salaries and other benefits. She did not move for the reconsideration of this resolution within fifteen (15) days from receipt thereof [11] nor did she file a petition for its review within the same period under Rule 43 of the 1997 Rules of Civil Procedure. [12] To be sure, both the CSC and respondent herself admitted the finality of the Resolution and acted upon it when she was granted an order for its execution.

Meanwhile, MSU filed its petition for review with the Court of Appeals (CA-G.R. No. SP-66188) assailing CSC Resolution No. 01-0558 dated 8 March 2001 and CSC Resolution No. 01-1225 dated 19 July 2001 denying MSU's motion for reconsideration.

Ordinarily, under the foregoing circumstances, neither the Civil Service Commission nor the Court of Appeals has jurisdiction to direct the substantial amendment of CSC's relevant resolutions upon the behest of respondent. [13] The principle governing ordinary appeal from the Regional Trial Court to the Court of Appeals applies

suppletorily[14] mutatis mutandis -

x x x where all the parties have either thus perfected their appeals by filing their notices of appeal in due time and the period to file such notice of appeal has lapsed for those who did not do so, then the trial court loses jurisdiction over the case as of the filing of the last notice of appeal or the expiration of the period to do so for all the parties.[15]

This rule is also articulated in *Associated Bank v. Gonong*[16] where we held that only after all the parties' respective periods to appeal shall have lapsed that the court loses its jurisdiction over the case. What is left as residual jurisdiction of the Civil Service Commission pertains only to matters for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal or the immediate execution of its resolutions under the Revised Uniform Rules on Administrative Cases in the Civil Service. This is to ensure the orderly disposition of the case at both the levels of the CSC and the appellate court.[17]

Nonetheless, we cannot inflexibly dwell on the defect of a belated appeal and coldly thwart a review of the instant case. For it cannot be denied that even after acknowledging the finality of Resolution No. 01-0558 dated 8 March 2001, the CSC still entertained the twin motions of respondent on 8 October 2001 and 12 December 2001 to modify the same resolution and insert therein an order for the payment of back wages. The CSC in fact promulgated Resolution No. 02-0321 dated 28 February 2002 denying respondent's importunate motions for the reason that she allegedly did not report for work but not because they were already time-barred.

No doubt, the Civil Service Commission was in the legitimate exercise of its mandate under Sec. 3, Rule I, of the Revised Uniform Rules on Administrative Cases in the Civil Service that "[a]dministrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." This authority is consistent with its powers and functions to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws" being the central personnel agency of the Government.[18]

Furthermore, there are special circumstances in accordance with the tenets of justice and fair play that warrant such liberal attitude on the part of the CSC and a compassionate like-minded discernment by this Court.[19] To begin with, respondent was consistently denied reinstatement by the responsible officers of MSU and vehemently barred from resuming her previous position. The first order for her return to work was issued on 8 March 2001 which was followed by repeated personal appeals for the immediate execution of the CSC resolution.[20] Thereafter, when respondent was still forced out of work, the CSC issued its second and third orders on 19 July 2001 and 4 October 2001, respectively, for the President of MSU to restore her to the item from which she was illegally dismissed. As these private requests and official directives were cruelly rejected by her employer and the period of her unemployment was unduly prolonged, respondent had no choice and was compelled to ask for back salaries and other benefits to offset the callous repudiation of what was due her.

To prevent respondent from claiming back wages 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.

As commented in *Obut v. Court of Appeals*,[21] "we cannot look with favor on a course of action which would place the administration of justice in a straightjacket for then the result would be a poor kind of justice, if there would be justice at all. Verily, judicial orders x x x are issued to be obeyed, nonetheless a non-compliance is to be

dealt with as the circumstances attending the case may warrant. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities."

The same principle of liberality may also be drawn upon to gloss over the failure of respondent to implead MSU as party-respondent in the petition before the Court of Appeals while joining only herein petitioners as Chairman and Commissioners of the CSC to answer her petition. While as a rule it would have been necessary to adhere to this practice,[22] in the instant case no one among the Court of Appeals, the CSC and the Office of the Solicitor General saw it fit to name or cause to be included MSU as party-respondent. Indeed, the Comment of the OSG argued on the merits as if it was acting in unison with respondent's employer, stressing all possible claims that may be alleged to defeat respondent's petition. Ultimately, what is crucial is that both CSC and MSU are part of the same bureaucracy that manages and supervises government personnel, and as such, represent a common interest on the question raised in the petition to be defended by the same core of lawyers from the OSG or the Office of the Government Corporate Counsel (OGCC).[23]

Justifiably, where no injury has been done as probably all lines of reasoning to oppose the petition have been asserted by parties of the same principal and brought to the fore in the proceedings a quo, and considering further that the underlying principle in the administration of justice and application of the rules is substance rather than form, reasonableness and fair play in place of formalities, we deem it apposite to except this particular case from the rigid operation of the procedure for the joinder of parties.

In any event, none of these procedural defects were raised as an issue on appeal and are now deemed waived. Of course we are not surprised that the OSG did not touch on these procedural issues and would seemingly prefer a ruling squarely on the issue of respondent's entitlement to back wages. As its services are paid for by taxpayers' money, the OSG ought to be the foremost officers of the court who in suitable cases must delve into the real concerns.

Unfortunately, the OSG also treaded upon technically precarious grounds when it filed the petition in the name of the CSC and signed the verification and certificate of non-forum shopping in behalf of its client. Sure enough, respondent vigorously objects to the standing of the CSC as party-petitioner in the instant petition, citing our ruling in *Civil Service Commission v. Court of Appeals*. [24]

That the CSC may appeal from an adverse decision of the Court of Appeals reversing or modifying its resolutions which may seriously prejudice the civil service system is beyond doubt. In *Civil Service Commission v. Dacoycoy* [25] this Court held that the CSC may become the party adversely affected by such ruling and the aggrieved party who may appeal the decision to this Court.

The situation where the CSC's participation is beneficial and indispensable often involves complaints for administrative offenses, such as neglect of duty, being notoriously undesirable, inefficiency and incompetence in the performance of official duties, and the like, where the complainant is more often than not acting merely as a witness for the government which is the real party injured by the illicit act. In cases of this nature, a ruling of the Court of Appeals favorable to the respondent employee is understandably adverse to the government, and unavoidably the CSC as representative of the government may appeal the decision to this Court to protect the integrity of the civil service system.

The CSC may also seek a review of the decisions of the Court of Appeals that are detrimental to its constitutional mandate as the central personnel agency of the government tasked to establish a career service, adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and

institutionalize a management climate conducive to public accountability. Nonetheless, the right of the CSC to appeal the adverse decision does not preclude the private complainant in appropriate cases from similarly elevating the decision for review.[26]

The ruling in *Civil Service Commission v. Dacoycoy* was further explained in *Civil Service Commission v. Court of Appeals*[27] where we held that the real party-in-interest in a case involving the non-renewal of the appointments of contractual employees would be the person who was allegedly dismissed from work and not the CSC, for it is he who would be benefited or injured by his reinstatement or non-reinstatement and who is present, available and competent to bring the matter on appeal. Like a judge whose order or decision is being assailed, the CSC should not be joined in the petition as it is not a combatant in a proceeding where opposing parties may contend their respective positions without the active participation of the CSC.[28]

In the instant case, the CSC is not the real party-in-interest as this suit confronts the Decision of the Court of Appeals to award back wages for respondent arising from an illegitimate personnel and non-disciplinary action of MSU, which is different from an administrative disciplinary proceeding where the injured party is the government. We fail to see how the assailed Decision can impair the effectiveness of government, damage the civil service system or weaken the constitutional authority of the CSC so as to authorize the latter to prosecute this case. As a rule, the material interest for this purpose belongs to MSU since it instigated the illegal dismissal and the execution of the Decision devolves upon it.[29]

Regrettably, however, respondent cannot insist that MSU be the indispensable party in the instant petition since the latter was not designated as respondent in the petition before the Court of Appeals. It would truly be a case of having her cake and eating it too for respondent to require MSU to undertake the present appeal from the assailed Decision when it was deprived of standing in the appellate court proceedings and unilaterally booted out as a prospective litigant herein. Hence, by force of circumstances, the CSC has the standing to initiate the instant petition for review.

Moreover, the OSG executed the verification and certificate of non-forum shopping in behalf of the CSC, citing as bases therefor *City Warden of the Manila City Jail v. Estrella*,[30] and *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*[31] Some clarification is in order to avoid perpetuating a misconception.

City Warden of the Manila City Jail v. Estrella is not an authority for the OSG to execute verification and certification of non-forum shopping on its own as legal representative of client agencies. The reason is that the OSG was in that case acting as a "People's Tribune" regardless of the official opinion of the relevant government agencies therein -

That the City Warden appears to have acquiesced in the release order of the trial court by his compliance therewith does not preclude the Solicitor General from taking a contrary position and appealing the same. The Solicitor General's duty is to present what he considers would legally uphold the best interest of the Government[32] (underscoring added).

Hence, there was no necessity for the verification and certificate of non-forum shopping to be executed by the City Warden himself. To be sure, it would have been awkward and irregular for the City Warden to do so given that his position was not the same as those reflected in the petition of the OSG. No doubt, the real party-in-interest is the OSG itself as representative of the State.[33] In *Pimentel v. Commission on Elections*[34] we held -

x x x the Solicitor General may, as it has in instances take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position x x x x As we commented on the role of the Solicitor General in cases pending before this Court, "This Court does not

expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."^[35]

But the rule is different where the OSG is acting as counsel of record for a government agency. For in such a case it becomes necessary to determine whether the petitioning government body has authorized the filing of the petition and is espousing the same stand propounded by the OSG. Verily, it is not improbable for government agencies to adopt a stand different from the position of the OSG since they weigh not just legal considerations but policy repercussions as well. They have their respective mandates for which they are to be held accountable, and the prerogative to determine whether further resort to a higher court is desirable and indispensable under the circumstances.

The verification of a pleading, if signed by the proper officials of the client agency itself, would fittingly serve the purpose of attesting that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Of course, the OSG may opt to file its own petition as a "People's Tribune" but the representation would not be for a client office but for its own perceived best interest of the State.

The case of *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, is not also a precedent that may be invoked at all times to allow the OSG to sign the certificate of non-forum shopping in place of the real party-in-interest. The ruling therein mentions merely that the certification of non-forum shopping executed by the OSG constitutes substantial compliance with the rule since "the OSG is the only lawyer for the petitioner, which is a government agency mandated under Section 35, Chapter 12, Title III, Book IV, of the 1987 Administrative Code (Reiterated under Memorandum Circular No. 152 dated May 17, 1992) to be represented only by the Solicitor General."^[36]

By its very nature, "substantial compliance" is actually inadequate observance of the requirements of a rule or regulation which are waived under equitable circumstances^[37] to facilitate the administration of justice^[38] there being no damage or injury caused by such flawed compliance.^[39] This concept is expressed in the statement "the rigidity of a previous doctrine was thus subjected to an inroad under the concept of substantial compliance."^[40] In every inquiry on whether to accept "substantial compliance," the focus is always on the presence of equitable conditions to administer justice effectively and efficiently without damage or injury to the spirit of the legal obligation.

We have ruled previously^[41] that substantial compliance with the certificate of non-forum shopping is sufficient. The equitable circumstances pleaded to show substantial compliance include the proximity of the filing of the complaint to the date of the effectivity of the circular requiring the certificate and the belated filing thereof, but the mere submission thereof after the filing of a motion to dismiss does not ipso facto operate as a substantial compliance.^[42] As summarized in *Bank of the Philippine Islands v. Court of Appeals*,^[43] "[w]hen a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, they may be liberally construed. This guideline is especially true when the petitioner has satisfactorily explained the lapse and fulfilled the requirements in its motion for reconsideration."

The fact that the OSG under the 1987 Administrative Code is the only lawyer for a government agency wanting to file a petition, or complaint for that matter, does not operate per se to vest the OSG with the authority to execute in its name the certificate of non-forum shopping for a client office. For, in many instances, client agencies of the OSG have legal departments which at times inadvertently take legal matters requiring court representation into

their own hands without the intervention of the OSG.[44] Consequently, the OSG would have no personal knowledge of the history of a particular case so as to adequately execute the certificate of non-forum shopping; and even if the OSG does have the relevant information, the courts on the other hand would have no way of ascertaining the accuracy of the OSG's assertion without precise references in the record of the case. Thus, unless equitable circumstances which are manifest from the record of a case prevail, it becomes necessary for the concerned government agency or its authorized representatives to certify for non-forum shopping if only to be sure that no other similar case or incident is pending before any other court.

We recognize the occasions when the OSG has difficulty in securing the attention and signatures of officials in charge of government offices for the verification and certificate of non-forum shopping of an initiatory pleading. This predicament is especially true where the period for filing such pleading is non-extendible or can no longer be further extended for reasons of public interest such as in applications for the writ of habeas corpus, in election cases or where sensitive issues are involved. This quandary is more pronounced where public officials have stations outside Metro Manila.

But this difficult fact of life within the OSG, equitable as it may seem, does not excuse it from wantonly executing by itself the verification and certificate of non-forum shopping. If the OSG is compelled by circumstances to verify and certify the pleading in behalf of a client agency, the OSG should at least endeavor to inform the courts of its reasons for doing so, beyond instinctively citing *City Warden of the Manila City Jail v. Estrella* and *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*

Henceforth, to be able to verify and certify an initiatory pleading for non-forum shopping when acting as counsel of record for a client agency, the OSG must (a) allege under oath the circumstances that make signatures of the concerned officials impossible to obtain within the period for filing the initiatory pleading; (b) append to the petition or complaint such authentic document to prove that the party-petitioner or complainant authorized the filing of the petition or complaint and understood and adopted the allegations set forth therein, and an affirmation that no action or claim involving the same issues has been filed or commenced in any court, tribunal or quasi-judicial agency; and, (c) undertake to inform the court promptly and reasonably of any change in the stance of the client agency.

Anent the document that may be annexed to a petition or complaint under letter (b) hereof, the letter-endorsement of the client agency to the OSG, or other correspondence to prove that the subject-matter of the initiatory pleading had been previously discussed between the OSG and its client, is satisfactory evidence of the facts under letter (b) above. In this exceptional situation where the OSG signs the verification and certificate of non-forum shopping, the court reserves the authority to determine the sufficiency of the OSG's action as measured by the equitable considerations discussed herein.

Finally, after our lengthy discourse on the technical imperfections afflicting the instant case, we resolve the substantive issue of whether respondent is entitled to receive back salaries and other benefits for the period that she was illegally dismissed. Obviously, the answer is in the affirmative.

There is more than substantial evidence in the record consisting of the general payroll and attendance sheets to prove that petitioner assumed and exercised the functions of Director II and Manila Information and Liaisoning Officer at MSU as early as June 1995 after the MSU Board of Regents approved her permanent appointment which was issued earlier on 10 April 1995.[45] It cannot be refuted that in September 1998 she was terminated from the service on the alleged ground of expiration of her term and stopped from performing the functions of her position, and subsequently reinstated to her job upon the declaration of the CSC that her dismissal from the service was illegal. Clearly, the CSC gravely erred when thereafter it ruled that respondent did not actually

assume and perform the duties of her position so as to deprive her of back wages and other benefits.

In *Gabriel v. Domingo*[46] this Court held that an illegally dismissed government employee who is later ordered reinstated is entitled to back wages and other monetary benefits from the time of his illegal dismissal up to his reinstatement. This is only fair and sensible because an employee who is reinstated after having been illegally dismissed is considered as not having left his office and should be given a comparable compensation at the time of his reinstatement.

Respondent cannot be faulted for her inability to work or to render any service from the time she was illegally dismissed up to the time of her reinstatement. The policy of "no work, no pay" cannot be applied to her, for such distressing state of affairs was not of her own making or liking even as her family suffered tremendously as a consequence of her removal and while she was jobless. Verily, to withhold her back salaries and other benefits during her illegal dismissal would put to naught the constitutional guarantee of security of tenure for those in the civil service.

We also agree with the Court of Appeals that MSU cannot be made to pay all accruing back salaries and other benefits in favor of respondent. There are allegations to the effect that officials of MSU disobeyed in bad faith the writ of execution issued by the CSC. In *Gabriel v. Domingo*[47] we held that if the illegal dismissal, including the refusal to reinstate an employee after a finding of unlawful termination, is found to have been made in bad faith or due to personal malice of the superior officers then they will be held personally accountable for the employee's back salaries; otherwise, the government disburses funds to answer for such arbitrary dismissal.[48] This rule is also enunciated in Secs. 38[49] and 39[50] of Book I, E.O. 292, and in Secs. 53,[51] 55,[52] 56[53] and 58[54] of Rule XIV of the Omnibus Civil Service Rules and Regulations.

Accordingly, MSU as a government institution must compensate respondent with back salaries and other benefits only from the time of her illegal dismissal, which according to the case record began sometime in October 1998, until the motion for reconsideration of the MSU was denied and a writ of execution for respondent's reinstatement as Director II and Manila Information and Liaisoning Officer was issued. The reckoning period is not 8 March 2001 as determined by the appellate court but 19 July 2001 when CSC Resolution No. 01-1225 was promulgated wherein the motion for reconsideration of the MSU was denied with finality and the latter was explicitly commanded to allow respondent to assume and exercise the functions of Director II and Manila Information and Liaisoning Officer. For, a final decision of the CSC is immediately executory unless a motion for reconsideration is filed in the meantime.[55]

The back wages and other benefits accruing after 19 July 2001 are to be treated separately since they must be collected in the proper forum wherein the assertions of malice and ill will in the failure to reinstate respondent to her post are threshed out and the concerned parties given the full opportunity to be heard. Until such separate proceeding has been instituted and decided, it is premature to fix the liability for this portion of respondent's back wages and other benefits upon either the government as represented by MSU or the accountable officers thereof.

WHEREFORE, the instant Petition for Review is DENIED. The Decision of the Court of Appeals dated 28 October 2002 is AFFIRMED except that the cut-off date for the payment of back salaries to respondent should be adjusted from the date of her illegal dismissal to "19 July 2001," instead of "8 March 2001," since it was only on 19 July 2001 that MSU's motion for reconsideration was denied and the order of execution finally issued by the Civil Service Commission specifically directing MSU to reinstate respondent Pangandaman-Gania and exercise the functions of her position with the promulgation of CSC Resolution No. 01-1225.

This is without prejudice to respondent's claim for back salaries and other benefits in the appropriate forum corresponding to the period after 19 July 2001 until she is actually reinstated as Director II and Manila

Information and Liaisoning Officer.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio- Morales, Azcuna, and Tinga, JJ., concur.
Callejo, Sr., J., on leave.

[1] The complaint of respondent falls under "Other Personnel and Non-Disciplinary Actions" of the Revised Uniform Rules on Administrative Cases in the Civil Service.

[2] CA Rollo, p. 31.

[3] Resolution penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Teodoro P. Regino and Rebecca de Guia-Salvador of the Seventh Division.

[4] CA Rollo, p. 68.

[5] Sec. 34, Rule 138, Rules of Court, authorizes a party to litigate his case personally.

[6] Decision penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Conrado M. Vasquez Jr. and Sergio L. Pestaño.

[7] Rollo, p. 26.

[8] Id., p. 7.

[9] G.R. No. 126354, 15 December 1999, 320 SCRA 703.

[10] See CA Rollo, pp. 119-175.

[11] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule VI, Sec. 80.

[12] See Sec. 4.

[13] Pefianco v. Moral, G.R. No. 132248, 19 January 2000, 322 SCRA 439; Gloria v. Court of Appeals, G.R. No. 131012, 21 April 1999, 306 SCRA 287; Manaloto v. Santos, No. L-21262, 31 December 1965, 15 SCRA 690; Government of the Philippines v. Antonio, No. L-23736, 19 October 1965, 15 SCRA 119; Montejo v. Cabangon, No. L-17977, 30 May 1962, 5 SCRA 266; Vito v. Lacson, No. L-16173, 23 December 1961, 3 SCRA 666.

[14] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule I, Sec. 3.

[15] I F.D. Regalado, Remedial Law Compendium 508 (1997).

[16] G.R. No. 77353, 30 July 1987, 152 SCRA 478.

[17] Under Sec. 49 of the Civil Service Law (Subtitle A, Title I, Book V of E.O. 292), a motion or petition for reconsideration takes precedence over an appeal where both parties opt to exercise their respective rights to question the decision in an administrative case, i.e., one of the parties moves for reconsideration while the other party files an appeal or petition for review. See Simsim v. Belmonte, No. L-25388, 31 August 1970, 34 SCRA 536.

[18] Civil Service Law, Secs. 1 and 12.

[19] Republic v. Court of Appeals, Nos. L-31303-04, 31 May 1978, 83 SCRA 453; Paulino v. Court of Appeals,

No. L-46723, 28 October 1977, 80 SCRA 257.

[20] The Revised Uniform Rules on Administrative Cases in the Civil Service, Rule VI, Sec. 82, provides that "[t]he filing and pendency of petition for review with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction."

[21] No. L-40535, 30 April 1976, 70 SCRA 546, 554.

[22] See 1997 Rules of Civil Procedure, Rule 43, Sec. 6 where public respondent is merely a nominal or formal party; E.O. 292, Bk. VII, Chap. 4, Sec. 25 (3) which provides "[t]he action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court;" Pastor v. City of Pasig, G.R. No. 146873, 9 May 2002; Calderon v. Solicitor General, G.R. Nos. 103752-53, 25 November 1992, 215 SCRA 876.

[23] The Mindanao State University was incorporated as a State University under RA 1387 (1955) as amended.

[24] See Note 9.

[25] G.R. No. 135805, 29 April 1999, 306 SCRA 425.

[26] Philippine National Bank v. Garcia, G.R. No. 141246, 9 September 2002.

[27] See Note 9.

[28] See Calderon v. Solicitor General, supra Note 22.

[29] See Pastor v. City of Pasig, supra Note 22.

[30] G.R. No. 141211, 31 August 2001, 364 SCRA 257.

[31] G.R. No. 127105, 25 June 1999, 309 SCRA 87.

[32] See Note 30.

[33] See C.R. Villacorta, "The Sixteenth Justice: Balancing of Interests in the Office of the Solicitor General," XIV Law. Rev. 31 July 2001, pp. 4, 6.

[34] G.R. No. 126394, 24 April 1998, 289 SCRA 586.

[35] Id. at 595 citing Orbos v. Civil Service Commission, G.R. No. 92561, 12 September 1990, 189 SCRA 459.

[36] See Note 31.

[37] Ruga v. National Labor Relations Commission, G.R. Nos. 72654-61; 22 January 1990, 181 SCRA 266.

[38] Porac Trucking v. Court of Appeals, G.R. No. 81093. 6 March 1990, 183 SCRA 45.

[39] In The Matter of the Intestate Estate of Andres G. De Jesus and Bibiana Roxas De Jesus, Roxas v. De Jesus, No. L-38338, 28 January 1985, 134 SCRA 245; Vda. de Roldan v. Roldan, No. L-19601, 31 March 1966, 16 SCRA 479.

[40] Garcia v. Court of Appeals, No. L-34620, 29 April 1977, 76 SCRA 609.

[41] Kavinta v. Castillo, G.R. No. 117083, 27 October 1995, 249 SCRA 604.

[42] Ibid.

[43] G.R. No. 146923, 30 April 2003.

[44] See e.g. CA Rollo, pp. 79-80, 83-86 where the Civil Service Commission filed with the Court of Appeals its own pleading captioned "Manifestation In Lieu of Comment" which the Office of the Solicitor General in its counter-manifestation asked the appellate court to disregard.

[45] CA Rollo, pp. 119-175.

[46] G.R. No. 87420, 17 September 1990, 189 SCRA 674.

[47] Ibid.

[48] See also *Dumlao v. Court of Appeals*, 199 Phil. 442 (1982); *Correa v. CFI of Bulacan*, L-46096, July 30, 1979, 92 SCRA 312; *Mindanao Realty Corp. v. Kintanar*, No. L-17152, 30 November 1962, 6 SCRA 814; *Tabuena v. Court of Appeals*, No. L-16290, 31 October 1961, 3 SCRA 413.

[49] Sec. 38. Liability of Superior Officers. - (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence. (2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law. (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

[50] Sec. 39. Liability of Subordinate Officers. - No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

[51] Sec. 53. The head of department or agency or any responsible official who willfully and deliberately refuses or fails to implement or execute the final resolution or decision of the Commission to the prejudice of the party affected or the public in general shall be liable for contempt of the Commission. In case the decision directed payment of back salaries, the head of the department shall be made liable in his personal capacity for the payment of said salaries and other monetary benefits corresponding to the period of delay in the implementation of said decision, order or ruling.

[52] Sec. 55. Indirect contempt shall be imposed only after due proceedings. Indirect contempt may be committed through any of the following acts or omissions: (a) disobedience or resistance to a lawful writ, process, order, decision, resolution, ruling, summons, subpoena or command of, or injunction of the Commission x x x

[53] Sec. 56. If the respondent is adjudged guilty of indirect contempt committed against the Commission, he may be punished by a fine of not more than One Thousand Pesos (P1,000.00) for every act of indirect contempt x x x If the contempt consists in the violation of an injunction or omission to do an act which is still within the power of the respondent to perform, the respondent shall, in addition, be made liable for all damages as a consequence thereof.

[54] Sec. 58. Damages sustained by the aggrieved party shall refer to the total amount of his or her salaries and other money benefits which shall have accrued to the latter had the final order, decision, resolution, ruling, injunction or processes of the Commission been enforced/implemented immediately.

[55] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule VI, Sec. 80; Omnibus Civil Service Rules and Regulations, Rule XIV, Sec. 50.

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