

**RUFINO O. ABUDA, PETITIONER, VS. AUDITOR GENERAL,
RESPONDENT.***G.R. No. 16071. April 29, 1961*

Ponente: REYES, J.B.L., J.

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This petition for review seeks the reversal of respondent Auditor General's decision, denying the claim of petitioner Rufino O. Abuda for the payment of his salary as Justice of the Peace of General MacArthur and Qinafundan, Samar, during the period of his suspension.

Since 28 July 1952, petitioner was the Justice of the Peace of General MacArthur and Quinapundan, Samar. On said date, he was convicted of the crime of libel by the Court of First Instance of Samar and sentenced to pay a fine of P200.00. No appeal from this judgment was perfected by him in due time. In an administrative order dated 3 November 1952, petitioner was indefinitely suspended from office, .effective upon receipt of said notice by him, in view of the aforesaid conviction. The order was soon followed by another letter from the Office of the President, dated 26 June 1953, asking petitioner to tender his resignation from the service aa of the date of his suspension, or otherwise, face dismissal. For the same reason, the Court of First Instance of Samar suspended petitioner as of 22 June 1953 from the practice of law. This Court, however, in its resolution of 23 July 1953, lifted the said order upon the ground that "the act or offense of which he was found guilty * * * was not sufficient to constitute gross misconduct in the office of an attorney-at-law, nor did it involve moral turpitude."

Petitioner filed petitions for reinstatement by the President, and likewise sought absolute pardon; but his pleas were either denied or not acted upon.

Finally, on 19 January 1955, petitioner tendered his resignation to the President. However, he withdrew the same on 14 February 1955, after he agreed to submit to an administrative investigation to be conducted by the Court of First Instance of Samar regarding his case.

Finding that the criminal case for libel was insufficient as a ground for suspension, Judge Fidel Fernandez of the Court of First Instance of Samar recommended petitioner's exoneration from the administrative complaint. Acting upon this recommendation, the President, concurring with his Secretary of Justice, on March 6, 1956 ordered petitioner's reinstatement, but without right to salary during the period of suspension, on the thesis that, although the offense committed by petitioner was neither serious nor directly connected with his office, still "his conviction somehow reflected on his fitness for the position, in view of which he should be punished accordingly" (Adm. Order No. 182, March 6, 1956).

The question now thus arises whether or not petitioner should be entitled to recover his back salaries.

We think not. Section 260 of the Revised Administrative Code provides:

"Payment of salary accruing pending suspension.—When the Chief of a Bureau or Office suspends a subordinate officer or employee from duty, the person suspended shall not receive pay during suspension

unless the Department Head shall so order; but upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid, but without prejudice to the application of the disciplinary provision of section sis hundred and ninety-five hereof.

In case of a person suspended by the President of the Philippines, no salary shall be paid during, suspension unless so provided in the order of suspension; but upoh subsequent reinstatement or exoneration of the suspended person, any salary so withheld may be paid in whole or in part, at the discretion of the officer by whom the suspension was effected." (*Italics supplied*)

Petitioner's case clearly falls under the second paragraph thereof, wherein it is discretionary with the President to order or not the payment of the suspended official's salary during the. period of suspension. That discretion having been exercised, this Court is without power to substitute its own for it. It is clear from the text of Administrative Order No. 182 of President Magsaysay that petitioner's reinstatement was not an exoneration, but was ordered because the petitioner has been sufficiently punished with his suspension without salary.

Upon the other hand, Section 35 of Republic Act No. 2260[1] (erroneously cited by petitioner as Section 35, Act No. 2265) took effect only on 19 June 1959, and cannot have any application to this case.

There is, likewise, apparently no merit in petitioner's contention that the President, in not giving full effect to Judge Fidel Fernandez's (of the Court of First Instance of Samar) report and recommendation for exoneration, encroached upon the powers of the judiciary. In the first place, it does not appear that Judge Fernandez recommended the payment of petitioner's salary during suspension, and in the second place, said judge was acting not as the presiding magistrate of his court but as a delegate of the President.

Petitioner's plea for a review of the legality of his suspension is now barred by his own laches. Since he was suspended in 1952, petitioner has not attempted to question such action by appropriate court suit. It is the established trend of our jurisprudence that the general interest demands that questions of titte to or tenure of public office should be submitted for judicial determination without loss of time, and that delay in instituting action is adequate reason for denying relief.[2]

Wherefore, the decision of the Auditor General appealed from is affirmed, and the instant petition for review dismissed. Costs against petitioner.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

[1] When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commission of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated he shall be restored to his position with full pay for the period of his suspension."

[2] *Unabia vs. City Mayor*, 99 Phil., 253; 53 Off. Gaz., 132; *Velasquez vs. Gil*, 99 Phil., 457; 53 Off. Gaz., 5615; *Cayabyab vs. del Rosario*, G. R. No. L-10565, May 20, 1957; *Cuyo vs. Mayor of Baguio*, 101 Phil., 558; *Abella vs. Rodriguez*, 102 Phil., 543; 54 Off. Gaz., 2879; *Quingco vs. Rodriguez*, G. R. No. L-12144., September 17, 1958, *Erauda vs. del Rosario*, 103 Phil., 489; 54 Off. Gaz., 6253; *Taborada vs. City of Cebu, et al.*, G. R. No. L-11574, October 31, 1958; *Cerna vs. Osmeña, et al.*, 105 Phil., 774.

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