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THE CIVIL SERVICE COMMISSION, PETITIONER, VS. RICHARD G. CRUZ, RESPONDENT.

G.R. No. 187858, August 09, 2011

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This petition for review on certiorari assails the decision[1] and the resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105410. These assailed CA rulings reversed and set aside the ruling of the Civil Service Commission (CSC) in Resolution No. 080305[3] that denied respondent Richard G. Cruz's prayer for the award of back salaries as a result of his reinstatement to his former position.

THE FACTS

The respondent, Storekeeper A of the City of Malolos Water District (CMWD), was charged with grave misconduct and dishonesty by CMWD General Manager (GM) Nicasio Reyes. He allegedly uttered a false, malicious and damaging statement (Masasamang tao ang mga BOD at General Manager) against GM Reyes and the rest of the CMWD Board of Directors (Board); four of the respondent's subordinates allegedly witnessed the utterance. The dishonesty charge, in turn, stemmed from the respondent's act of claiming overtime pay despite his failure to log in and out in the computerized daily time record for three working days.

The respondent denied the charges against him. On the charge of grave misconduct, he stressed that three of the four witnesses already retracted their statements against him. On the charge of dishonesty, he asserted that he never failed to log in and log out. He reasoned that the lack of record was caused by technical computer problems. The respondent submitted documents showing that he rendered overtime work on the three days that the CMWD questioned.

GM Reyes preventively suspended the respondent for 15 days. Before the expiration of his preventive suspension, however, GM Reyes, with the approval of the CMWD Board, found the respondent guilty of grave misconduct and dishonesty, and dismissed him from the service.[4]

CSC RULING

The respondent elevated the findings of the CMWD and his dismissal to the CSC, which absolved him of the two charges and ordered his reinstatement. In CSC Resolution No. 080305, the CSC found no factual basis to support the charges of grave misconduct and dishonesty.

In ruling that the respondent was not liable for grave misconduct, the CSC held:

> Cruz was adjudged guilty of grave misconduct for his alleged utterance of such maligning statements, "MASASAMANG TAO ANG MGA BOD AT GENERAL MANAGER". However, such utterance, even if it were true, does not constitute a flagrant disregard of rule or was actuated by corrupt motive. To the mind of the Commission, it was a mere expression of disgust over the management style of the GM and the Board of Directors, especially when due notice is taken of the fact that the latter officials were charged with the Ombudsman for various anomalous transactions.[5]

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In ruling that the charge of dishonesty had no factual basis, the CSC declared:

> Based on the records of the case, the Commission is not swayed that the failure of Cruz to record his attendance on April 21 and 22, 2007 and May 5, 2007, while claiming overtime pay therefor, amounts to dishonesty. Cruz duly submitted evidence showing his actual rendition of work on those days. The residents of the place where he worked attested to his presence thereat on the days in question.[6]

The CSC, however, found the respondent liable for violation of reasonable office rules for his failure to log in and log out. It imposed on him the penalty of reprimand but did not order the payment of back salaries.

The CMWD and the respondent separately filed motions for reconsideration against the CSC ruling. CMWD questioned the CSC's findings and the respondent's reinstatement. The respondent, for his part, claimed that he is entitled to back salaries in light of his exoneration from the charges of grave misconduct and dishonesty. The CSC denied both motions.

Both the CMWD and the respondent elevated the CSC ruling to the CA via separate petitions for review under Rule 43 of the Rules of Court. The CA dismissed the CMWD's petition and this ruling has lapsed to finality.[7] Hence, the issue of reinstatement is now a settled matter. As outlined below, the CA ruled in the respondent's favor on the issue of back salaries. This ruling is the subject of the present petition with us.

CA RULING

Applying the ruling in Bangalisan v. Hon. CA,[8] the CA found merit in the respondent's appeal and awarded him back salaries from the time he was dismissed up to his actual reinstatement. The CA reasoned out that CSC Resolution No. 080305 totally exonerated the respondent from the charges laid against him. The CA considered the charge of dishonesty successfully refuted as the respondent showed that he performed overtime service. The CA thereby rejected the CSC's contention that the charge of dishonesty had been merely downgraded to a lesser offense; the CA saw the finding in CSC Resolution No. 080305 to be for an offense (failing to properly record his attendance) entirely different from the dishonesty charge because their factual bases are different. Thus, to the CA, CSC Resolution No. 080305 did not wholly restore the respondent's rights as an exonerated employee as it failed to order the payment of his back salaries. The CA denied the CSC's motion for reconsideration.

ISSUE

> WHETHER OR NOT [THE] RESPONDENT IS ENTITLED TO BACK SALARIES AFTER THE CSC ORDERED HIS REINSTATEMENT TO HIS FORMER POSITION, CONSONANT WITH THE CSC RULING THAT HE WAS GUILTY ONLY OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.[9]

CSC's position

The CSC submits that the CA erred in applying the ruling in Bangalisan, requiring as a condition for entitlement to back salaries that the government employee be found innocent of the charge and that the suspension be unjustified. CSC Resolution No. 080305 did not fully exculpate the respondent but found him liable for a lesser offense. Likewise, the respondent's preventive suspension pending appeal was justified because he was not exonerated.

The CSC also submits that the factual considerations in Bangalisan are entirely different from the circumstances of the present case. In Bangalisan, the employee, Rodolfo Mariano, a public school teacher, was charged with grave misconduct for allegedly participating, together with his fellow teachers, in an illegal mass action. He was ordered exonerated from the misconduct charge because of proof that he did not actually participate in the mass

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action, but was absent from work for another reason. Although the employee was found liable for violation of office rules and regulations, he was considered totally exonerated because his infraction stemmed from an act entirely different (his failure to file a leave of absence) from the act that was the basis of the grave misconduct charge (the unjustified abandonment of classes to the prejudice of the students).

The CSC argues that in the present case, the charge of dishonesty and the infraction committed by the respondent stemmed from a single act - his failure to properly record his attendance. Thus, the respondent cannot be considered totally exonerated; the charge of dishonesty was merely downgraded to a violation of reasonable office rules and regulations.

Accordingly, the CSC posits that the case should have been decided according to our rulings in Jacinto v. CA[10] and De la Cruz v. CA[11] where we held the award of back salaries to be inappropriate because the teachers involved were not fully exonerated from the charges laid against them.

The respondent's position

The respondent maintains that he is entitled to reinstatement and back salaries because CSC Resolution No. 080305 exonerated him from the charges laid against him; for the purpose of entitlement to back salaries, what should control is his exoneration from the charges leveled against him by the CMWD. That the respondent was found liable for a violation different from that originally charged is immaterial for purposes of the back salary issue.

The respondent also asserts that the Bangalisan ruling squarely applies since the CSC formally admitted in its Comment to CMWD's petition for review before the CA that the penalty of reprimand is not a reduced penalty for the penalty of dismissal imposable for grave misconduct and dishonesty.[12]

THE COURT'S RULING

We deny the petition for lack of merit.

The issue of entitlement to back salaries, for the period of suspension pending appeal,[13] of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle - public officials are only entitled to compensation if they render service. We have excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law";[14] to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.[15]

The present legal basis for an award of back salaries is Section 47, Book V of the Administrative Code of 1987.

> Section 47. Disciplinary Jurisdiction. - x x x.
>
> (4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. (italics ours)

This provision, however, on its face, does not support a claim for back salaries since it does not expressly provide for back salaries during this period; our established rulings hold that back salaries may not be awarded for the period of preventive suspension[16] as the law itself authorizes its imposition so that its legality is beyond question.

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To resolve the seeming conflict, the Court crafted two conditions before an employee may be entitled to back salaries: a) the employee must be found innocent of the charges and b) his suspension must be unjustified.[17] The reasoning behind these conditions runs this way: although an employee is considered under preventive suspension during the pendency of a successful appeal, the law itself only authorizes preventive suspension for a fixed period; hence, his suspension beyond this fixed period is unjustified and must be compensated.

The CSC's rigid and mechanical application of these two conditions may have resulted from a misreading of our rulings on the matter; hence, a look at our jurisprudence appears in order.

Basis for award of back salaries

The Court had the occasion to rule on the issue of entitlement to back salaries as early as 1941,[18] when Section 260 of the Revised Administrative Code of 1917 (RAC)[19] was the governing law. The Court held that a government employee, who was suspended from work pending final action on his administrative case, is not entitled to back salaries where he was ultimately removed due to the valid appointment of his successor. No exoneration or reinstatement, of course, was directly involved in this case; thus, the question of back salaries after exoneration and reinstatement did not directly arise. The Court, however, made the general statement that:

> As a general proposition, a public official is not entitled to any compensation if he has not rendered any service, and the justification for the payment of salary during the period of suspension is that the suspension was unjustified or that the official was innocent. Hence, the requirement that, to entitle to payment of salary during suspension, there must be either reinstatement of the suspended person or exoneration if death should render reinstatement impossible.[20] (emphasis and underscoring ours)

In Austria v. Auditor General,[21] a high school principal, who was penalized with demotion, claimed payment of back salaries from the time of his suspension until his appointment to the lower position to which he was demoted. He argued that his later appointment even if only to a lower position of classroom teacher amounted to a reinstatement under Section 260 of the RAC. The Court denied his claim, explaining that the reinstatement under Section 260 of the RAC refers to the same position from which the subordinate officer or employee was suspended and, therefore, does not include demotional appointments. The word "reinstatement" was apparently equated to exoneration.

In the 1961 case of Gonzales v. Hon. Hernandez, etc. and Fojas[22] interpreting the same provision, the Court first laid down the requisites for entitlement to back salaries. Said the Court:

> A perusal of the decisions of this Court[23] x x x show[s] that back salaries are ordered paid to an officer or an employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal. In the case at bar, [the employee] was not completely exonerated, because although the decision of the Commissioner of Civil Service [ordering separation from service] was modified and [the employee] was allowed to be reinstated, the decision [imposed upon the employee the penalty of two months suspension without pay]. [emphasis and underscoring ours]

Obviously, no exoneration actually resulted and no back salary was due; the liability for the offense charged remained, but a lesser penalty was imposed.

In Villamor, et al. v. Hon. Lacson, et al.,[24] the City Mayor ordered the dismissal from the service of city employees after finding them guilty as charged. On appeal, however, the decision was modified by considering "the suspension of over one year x x x, already suffered x x x [to be] sufficient punishment"[25] and by ordering their immediate reinstatement to the service. The employees thereupon claimed that under Section 695 of the RAC, the punishment of suspension without pay cannot exceed two (2) months. Since the period they were not allowed to work until their reinstatement exceeded two months, they should be entitled to back salaries

corresponding to the period in excess of two months. In denying the employees' claim for back salaries, the Court held:

> The fallacy of [the employees'] argument springs from their assumption that the modified decision had converted the penalty to that of suspension. The modified decision connotes that although dismissal or resignation would be the proper penalty, the separation from work for the period until their reinstatement, would be deemed sufficient. Said decision did not, in the least, insinuate that suspension should have been the penalty.
>
> x x x [T]he modified decision did not exonerate the petitioners. x x x And even if we consider the punishment as suspension, before a public official or employee is entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee was innocent of the charges proffered against him.[26]

On the whole, these rulings left the application of the conditions for the award of back salaries far from clear. Jurisprudence did not strictly observe the requirements earlier enunciated in Gonzales as under subsequent rulings, the innocence of the employee alone served as basis for the award of back salaries.

The innocence of the employee as sole basis
for an award of back salaries

In Tan v. Gimenez, etc., and Aguilar, etc.,[27] we ruled that the payment of back salary to a government employee, who was illegally removed from office because of his eventual exoneration on appeal, is merely incidental to the ordered reinstatement.

Tan was subsequently reiterated in Tañala v. Legaspi, et al.,[28] a case involving an employee who was administratively dismissed from the service following his conviction in the criminal case arising from the same facts as in the administrative case. On appeal, however, he was acquitted of the criminal charge and was ultimately ordered reinstated by the Office of the President. Failing to secure his actual reinstatement, he filed a mandamus petition to compel his superiors to reinstate him and to pay his back salaries from the date of his suspension to the date of his actual reinstatement. We found merit in his plea and held:

> [The employee] had been acquitted of the criminal charges x x x, and the President had reversed the decision x x x in the administrative case which ordered his separation from the service, and the President had ordered his reinstatement to his position, it results that the suspension and the separation from the service of the [employee] were thereby considered illegal. x x x.
>
> x x x [In this case,] by virtue of [the President's order of reinstatement], [the employee's] suspension and separation from the service x x x was thereby declared illegal, so that for all intents and purposes he must be considered as not having been separated from his office. The lower court has correctly held that the [employee] is entitled to back salaries.[29]

The Tañala ruling was reiterated in Cristobal v. Melchor,[30] Tan, Jr. v. Office of the President,[31] De Guzman v. CSC[32] and Del Castillo v. CSC[33] - cases involving government employees who were dismissed after being found administratively liable, but who were subsequently exonerated on appeal.

In Garcia v. Chairman Commission on Audit,[34] the Court held that - where the employee, who was dismissed after being found administratively liable for dishonesty, was acquitted on a finding of innocence in the criminal case (for qualified theft) based on the same acts for which he was dismissed - the executive pardon granted him in the administrative case (in light of his prior acquittal) entitled him to back salaries from the time of his illegal dismissal up to his actual reinstatement.

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The above situation should be distinguished from the case of an employee who was dismissed from the service after conviction of a crime and who was ordered reinstated after being granted pardon. We held that he was not entitled to back salaries since he was not illegally dismissed nor acquitted of the charge against him.[35]

Incidentally, under the Anti-Graft and Corrupt Practices Act,[36] if the public official or employee is acquitted of the criminal charge/s specified in the law, he is entitled to reinstatement and the back salaries withheld during his suspension, unless in the meantime administrative proceedings have been filed against him.

In Tan, Jr. v. Office of the President,[37] the Court clarified that the silence of Section 42 (Lifting of Preventive Suspension Pending Administrative Investigation) of the Civil Service Decree[38] on the payment of back salaries, unlike its predecessor,[39] is no reason to deny back salaries to a dismissed civil servant who was ultimately exonerated.

> Section 42 of P.D. No. 807, however, is really not in point x x x [as] it does not cover dismissed civil servants who are ultimately exonerated and ordered reinstated to their former or equivalent positions. The rule in the latter instance, just as we have said starting with the case of Cristobal vs. Melchor is that when "a government official or employee in the classified civil service had been illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held."[40]

These cited cases illustrate that a black and white observance of the requisites in Gonzales is not required at all times. The common thread in these cases is either the employee's complete exoneration of the administrative charge against him (i.e., the employee is not found guilty of any other offense), or the employee's acquittal of the criminal charge based on his innocence. If the case presented falls on either of these instances, the conditions laid down in Gonzales become the two sides of the same coin; the requirement that the suspension must be unjustified is automatically subsumed in the other requirement of exoneration.

Illegal suspension as sole basis for an award
of back salaries

By requiring the concurrence of the two conditions, Gonzales apparently made a distinction between exoneration and unjustified suspension/dismissal. This distinction runs counter to the notion that if an employee is exonerated, the exoneration automatically makes an employee's suspension unjustified. However, in Abellera v. City of Baguio, et al.,[41] the Court had the occasion to illustrate the independent character of these two conditions so that the mere illegality of an employee's suspension could serve as basis for an award of back salaries.

Abellera, a cashier in the Baguio City Treasurer's Office, was ordered dismissed from the service after being found guilty of dishonesty and gross negligence. Even before the period to appeal expired, the City of Baguio dismissed him from the service. On appeal, however, the penalty imposed on him was reduced "to two months suspension, without pay" although the appealed decision was affirmed "in all other respects."

When the issue of Abellera's entitlement to back salaries reached the Court, we considered the illegality of Abellera's suspension - i.e., from the time he was dismissed up to the time of his actual reinstatement - to be a sufficient ground to award him back salaries.

> The rule on payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in this jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, RA 2260), but also when the suspension is unjustified.
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> In the present case, upon receipt of the [Civil Service Commissioner's] decision x x x finding [Abellera] guilty,

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> but even before the period to appeal had expired, [the Baguio City officials] dismissed [Abellera] from the service and another one was appointed to replace him. [Abellera's] separation x x x before the decision of the Civil Service Commissioner had become final was evidently premature. [The Baguio City officials] should have realized that [Abellera] still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period, and the possibility of that decision being reversed or modified.[42] As it did happen on such appeal x x x the penalty imposed by the Commissioner was reduced x x x to only 2 months suspension. And yet, by [the Baguio City officials'] action, [Abellera] was deprived of work for more than 2 years. Clearly, Abellera's second suspension from office [i.e., from the time he was dismissed up to his actual reinstatement] was unjustified, and the payment of the salaries corresponding to said period is, consequently, proper.[43] (emphases and underscoring ours)

The import of the Abellera ruling was explained by the Court in the subsequent case of Yarcia v. City of Baguio[44] that involved substantially similar facts. The Court clarified that the award of back salaries in Abellera was based on the premature execution of the decision (ordering the employee's dismissal from the service), resulting in the employee's unjustified "second suspension." Under the then Civil Service Rules, the Commissioner of Civil Service had the discretion to order the immediate execution of his decision in administrative cases "in the interest of public service." Unlike in Abellera, this discretion was exercised in Yarcia; consequently, the employee's separation from the service pending his appeal "remained valid and effective until it was set aside and modified with the imposition of the lesser penalty."[45]

The unjustified "second suspension" mentioned in Abellera actually refers to the period when the employee was dismissed from the service up to the time of his actual reinstatement. Under our present legal landscape, this period refers to "suspension pending appeal."[46]

In Miranda v. Commission on Audit,[47] the Court again had the occasion to consider the illegality of the suspension of the employee as a separate ground to award back salaries. Following the filing of several administrative charges against him, Engr. Lamberto Miranda was "preventively" suspended from June 2, 1978 to May 7, 1986. He was reinstated on May 22, 1986. On October 7, 1986, the administrative case against him was finally dismissed "for lack of evidence." When his claim for back salaries (from the time he was "preventively" suspended up to his actual reinstatement) was denied by the Commission on Audit, he brought a certiorari petition with this Court.

In granting the petition, the Court ruled that since the law[48] limits the duration of preventive suspension to a fixed period, Engr. Miranda's suspension for almost eight (8) years is "unreasonable and unjustified." Additionally, the Court observed that the dropping of the administrative case against Engr. Miranda for lack of evidence "is even an eloquent manifestation that the suspension is unjustified."[49] The Court held:

> This being so, Engineer Miranda is entitled to backwages during the period of his suspension as it is already settled in this jurisdiction that a government official or employee is entitled to backwages not only if he is exonerated in the administrative case but also when the suspension is unjustified.[50] (emphases and underscoring ours)

Jurisprudential definition of exoneration

The mere reduction of the penalty on appeal does not entitle a government employee to back salaries if he was not exonerated of the charge against him. This is the Court's teaching in City Mayor of Zamboanga v. CA.[51] In this case, the employee was initially found guilty of disgraceful and immoral conduct and was given the penalty of dismissal by the City Mayor of Zamboanga. On appeal, however, the CA limited the employee's guilt to improper conduct and correspondingly reduced the penalty to "six-months suspension without pay with a stern warning that repetition of the same or similar offense will be dealt with more severely."[52] The CA also awarded him "full

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backwages."[53]

We held that the CA erred in awarding back salaries by reiterating the principle that back salaries may be ordered paid to an officer or employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal.[54]

The Court had the occasion to explain what constitutes "exoneration" in Bangalisan v. Hon. CA,[55] the respondent's cited case. In this case, the Secretary of Education found the public school teachers guilty as charged and imposed on them the penalty of dismissal. On appeal, the CSC affirmed the Secretary's ruling but reduced the penalty imposed to suspension without pay. However, the CSC found one of the teachers (Mariano) guilty only of violation of reasonable office rules and regulations, and only penalized her with reprimand. None of the petitioning public school teachers were awarded back salaries.

On appeal to this Court, we awarded back salaries to Mariano. We explained that since the factual premise of the administrative charges against him - i.e., his alleged participation in the illegal mass actions, and his suspension - was amply rebutted, then Mariano was in effect exonerated of the charges against him and was, thus, entitled to back salaries for the period of his suspension pending appeal.

> With respect to petitioner Rodolfo Mariano, payment of his back wages is in order. A reading of the resolution of the [CSC] will show that he was exonerated of the charges which formed the basis for his suspension. The Secretary of the DECS charged him with and he was later found guilty of grave misconduct x x x [and] conduct prejudicial to the best interest of the service x x x for his participation in the mass actions x x x. It was his alleged participation in the mass actions that was the basis of his preventive suspension and, later, his dismissal from the service.
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> However, the [CSC], in the questioned resolution, made [the] finding that Mariano was not involved in the "mass actions" but was absent because he was in Ilocos Sur to attend the wake and interment of his grandmother. Although the CSC imposed upon him the penalty of reprimand, the same was for his violation of reasonable office rules and regulations because he failed to inform the school or his intended absence and neither did he file an application for leave covering such absences.
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> x x x x
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> However, with regard to the other petitioners, the payment of their back wages must be denied. Although the penalty imposed on them was only suspension, they were not completely exonerated of the charges against them. The CSC made specific findings that, unlike petitioner Mariano, they indeed participated in the mass actions. It will be noted that it was their participation in the mass actions that was the very basis of the charges against them and their subsequent suspension.[56]

Bangalisan clearly laid down the principle that if the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal.[57]

Bangalisan reiterated that the payment of back salaries, during the period of suspension of a member of the civil service who is subsequently ordered reinstated, may be decreed only if the employee is found innocent of the charges which caused the suspension and when the suspension is unjustified. This pronouncement was re-echoed in Jacinto v. CA,[58] De la Cruz v. CA,[59] and Hon. Gloria v. CA.[60] Taking off from Bangalisan, the Court in

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De la Cruz categorically stated:

> The issue of whether back wages may be awarded to teachers ordered reinstated to the service after the dismissal orders x x x were commuted by the CSC to six (6) months suspension is already settled.
>
> In Bangalisan v. Court of Appeals, we resolved the issue in the negative on the ground that the teachers were neither exonerated nor unjustifiably suspended, two (2) circumstances necessary for the grant of back wages in administrative disciplinary cases.[61]

In Hon. Gloria, involving the same factual situation as Bangalisan, the CA awarded the public school teachers back salaries - for the period beyond the allowable period of preventive suspension - since they were ultimately exonerated. In affirming the CA, the Court distinguished preventive suspension from suspension pending appeal for the purpose of determining the extent of an employee's entitlement to back salaries. The Court ruled that under Executive Order (E.O.) No. 292, there are two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: (i) preventive suspension pending investigation[62] and (ii) preventive suspension pending appeal;[63] compensation is due only for the period of preventive suspension pending appeal should the employee be ultimately exonerated.[64] Citing Floyd R. Mechem's A Treatise on the Law of Public Offices and Officers,[65] Hon. Gloria ruled:

> Thus, it is not enough that an employee is exonerated of the charges against him. In addition, his suspension must be unjustified. The case of Bangalisan v. Court of Appeals itself similarly states that "payment of salaries corresponding to the period [1] when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension and [2] when the suspension is unjustified."[66] (emphases and underscoring ours)

A careful reading of these cases would reveal that a strict observance of the second condition for an award of back salaries becomes important only if the employee is not totally innocent of any administrative infraction. As previously discussed, where the employee is completely exonerated of the administrative charge or acquitted in the criminal case arising from the same facts based on a finding of innocence, the second requirement becomes subsumed in the first. Otherwise, a determination of the act/s and offense/s actually committed and of the corresponding penalty imposed has to be made.

Unjustified suspension

On the suspension/dismissal aspect, this second condition is met upon a showing that the separation from office is not warranted under the circumstances because the government employee gave no cause for suspension or dismissal. This squarely applies in cases where the government employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged.

Bangalisan, Jacinto and De la Cruz illustrate
the application of the two conditions

Both the CA and the respondent applied Bangalisan to justify the award of back salaries. The CSC argues against this position with the claim that the rulings in Jacinto and De la Cruz, not Bangalisan, should apply. After due consideration, we see no reason why the cited rulings and their application should be pitted against one another; they essentially espouse the same conclusions after applying the two conditions for the payment of back salaries.

Bangalisan, Jacinto and De la Cruz all stemmed from the illegal mass actions of public school teachers in Metro Manila in 1990. The teachers were charged with grave misconduct, gross neglect of duty, and gross violation of civil service law, rules and regulations, among others. The then Secretary of Education found them guilty and

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dismissed them from the service. The CSC, on appeal, ordered the teachers reinstated, but withheld the grant of their back salaries. The CSC found the teachers liable for conduct prejudicial to the best interest of the service and imposed on them the penalty of suspension. The CSC reasoned that since the teachers were not totally exculpated from the charge (but were found guilty of a lesser offense), they could not be awarded back salaries.

When these cases reached the Court, the issue of the teachers' entitlement to back salaries was raised. The teachers claimed that they were entitled to back salaries from the time of their dismissal or suspension until their reinstatement, arguing that they were totally exonerated from the charges since they were found guilty only of conduct prejudicial to the best interest of the service.

Under this factual backdrop, we applied the two conditions and distinguished between the teachers who were absent from their respective classes because they participated in the illegal mass action, on one hand, and the teachers who were absent for some other reason, on the other hand.

With respect to the teachers who participated in the illegal mass actions, we ruled that they were not entitled to back salaries since they were not exonerated. We explained that liability for a lesser offense, carrying a penalty less than dismissal, is not equivalent to exoneration. On the second condition, we ruled that their suspension is not unjustified since they have given a ground for their suspension - i.e., the unjustified abandonment of their classes to the prejudice of their students, the very factual premise of the administrative charges against them - for which they were suspended.

With respect to the teachers who were away from their classes but did not participate in the illegal strike, the Court awarded them back salaries, considering that: first, they did not commit the act for which they were dismissed and suspended; and second, they were found guilty of another offense, i.e., violation of reasonable office rules and regulations which is not penalized with suspension or dismissal. The Court ruled that these teachers were totally exonerated of the charge, and found their dismissal and suspension likewise unjustified since the offense they were found to have committed only merited the imposition of the penalty of reprimand.

These cases show the Court's consistent stand in determining the propriety of the award of back salaries. The government employees must not only be found innocent of the charges; their suspension must likewise be shown to be unjustified.

The Present Case

We find that the CA was correct in awarding the respondent his back salaries during the period he was suspended from work, following his dismissal until his reinstatement to his former position. The records show that the charges of grave misconduct and dishonesty against him were not substantiated. As the CSC found, there was no corrupt motive showing malice on the part of the respondent in making the complained utterance. Likewise, the CSC found that the charge of dishonesty was well refuted by the respondent's evidence showing that he rendered overtime work on the days in question.

We fully respect the factual findings of the CSC especially since the CA affirmed these factual findings. However, on the legal issue of the respondent's entitlement to back salaries, we are fully in accord with the CA's conclusion that the two conditions to justify the award of back salaries exist in the present case.

The first condition was met since the offense which the respondent was found guilty of (violation of reasonable rules and regulations) stemmed from an act (failure to log in and log out) different from the act of dishonesty (claiming overtime pay despite his failure to render overtime work) that he was charged with.

The second condition was met as the respondent's committed offense merits neither dismissal from the service nor

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suspension (for more than one month), but only reprimand.

In sum, the respondent is entitled to back salaries from the time he was dismissed by the CMWD until his reinstatement to his former position - i.e., for the period of his preventive suspension pending appeal. For the period of his preventive suspension pending investigation, the respondent is not entitled to any back salaries per our ruling in Hon. Gloria.[67]

WHEREFORE, the petition is hereby DENIED. Costs against the petitioner.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, and Sereno, JJ., concur.
Del Castillo, J., no part.
Abad and Mendoza, JJ.,[ ] on official leave.

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[1] Penned by Associate Justice (now Supreme Court Associate Justice) Mariano C. del Castillo, and concurred in by Associate Justices Monina Arevalo-Zenarosa (ret.) and Apolinario D. Bruselas, Jr.; dated February 20, 2009. Rollo, pp. 32-43.

[2] Dated May 8, 2009; id. at 44-45.

[3] Penned by Commissioner Mary Ann Z. Fernandez-Mendoza; id. at 250-258.

[4] CMWD Memorandum No. 31-07 dated June 6, 2007; id. at 60.

[5] Id. at 72-73.

[6] Id. at 73.

[7] Docketed as CA-G.R. SP No. 104704, entitled "The City of Malolos Water District v. Civil Service Commission and Richard G. Cruz." The CA Decision promulgated on June 25, 2010 became final and executory on July 29, 2010, per Entry of Judgment dated January 10, 2011.

[8] 342 Phil. 586 (1997).

[9] Rollo, p. 21.

[10] 346 Phil. 656 (1997).

[11] 364 Phil. 786 (1999).

[12] Rollo, p. 282.

[13] Hon. Gloria v. CA, 365 Phil. 744 (1999).

[14] This provision uniformly exists in the 1935, 1973 and 1987 Constitutions.

[15] Tan v. Gimenez, etc., and Aguilar, etc., 107 Phil. 17 (1960).

[16] Hon. Gloria v. CA, supra note 13.

[17] Bangalisan v. CA, supra note 8.

[18] Reyes v. Hernandez, 71 Phil. 397 (1941).

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[19] Section 260 of the RAC reads:

> 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 provisions of section six hundred and ninety-five hereof.

[20] Reyes v. Hernandez, supra note 18, at 398.

[21] No. L-21918, January 24, 1967, 19 SCRA 79.

[22] 112 Phil. 160, 166 (1961).

[23] Gonzales v. Hernandez, ibid., did not specify the cases it relied upon for its pronouncement. A survey of prior jurisprudence, however, reveals the following as bases: Reyes v. Hernandez, supra note 18; Batungbakal v. National Development Company, 93 Phil. 182 (1953); National Rice and Corn Corp. v. NARIC Workers' Union, 98 Phil. 563 (1956); Tabora v. Montelibano, et al., 98 Phil. 800 (1956); and Tan v. Gimenez, etc., and Aguilar, etc., supra note 15.

[24] 120 Phil. 1213 (1964).

[25] Id. at 1215.

[26] Id. at 1218-1219.

[27] Supra note 15.

[28] 121 Phil. 541 (1965).

[29] Id. at 551-553.

[30] 189 Phil. 658 (1980).

[31] G.R. No. 110936, February 4, 1994, 229 SCRA 677.

[32] G.R. No. 101105, March 11, 1994, 231 SCRA 169. The illegality of the dismissal in this case resulted from the invalidity of the reorganization that authorized the employee's dismissal.

[33] 343 Phil. 734 (1997).

[34] G.R. No. 75025, September 14, 1993, 226 SCRA 356, 362-363.

[35] Sabello v. Department of Education, Culture and Sports, 259 Phil. 1109, 1114 (1989).

[36] Section 13 of Republic Act (R.A.) No. 3019 reads:

> Suspension and loss of benefits. -- Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

[37] Supra note 31.

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[38] Section 42 of Presidential Decree (P.D.) No. 807 reads:

Lifting of Preventive Suspension Pending Administrative Investigation. When the administrative case against the officer of employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

[39] R.A. No. 2260 or Civil Service Act of 1959. Section 35 of R.A. No. 2260 reads:

Lifting of Preventive Suspension Pending Administrative Investigation. When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner 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 suspension. (italics ours)

[40] Tan, Jr. v. Office of the President, supra note 31, at 679.

[41] No. L-23957, March 18, 1967, 19 SCRA 600.

[42] Under Section 28 of the Civil Service Rules implementing R.A. No. 2260 (Civil Service Act of 1959), the Commissioner of Civil Service has the discretion to order the immediate execution of his decision in administrative cases (J. Barredo's Dissent in Yarcia v. City of Baguio, etc., 144 Phil. 351 [1970]).

[43] See Neeland v. Villanueva, Jr., A.M. No. P-99-1316, August 31, 2001, 364 SCRA 204, 217, where the Court awarded back salaries to a Clerk of Court and Ex-officio Provincial Sheriff, whom the Court ordered dismissed from the service for gross misconduct. The resolution of dismissal was immediately implemented. On reconsideration, however, the Court found him guilty of simple neglect of duty and imposed on him only the penalty of fine. In granting his subsequent request for back salaries from the time of his dismissal until his reinstatement, the Court considered, among others, the prematurity of the immediate execution of the resolution of dismissal as basis for the award.

[44] Supra note 42.

[45] Citing Villamor, et al. v. Hon. Lacson, et al., supra note 24, which was also cited in Sales v. Mathay, Sr., etc., et al., 214 Phil. 153 (1984).

[46] See Bautista v. Peralta, No. L-21967, September 29, 1966, 18 SCRA 223, where the Court considered the "second suspension" mentioned in Abellera v. City of Baguio, et al., supra note 41, as a "preventive suspension." At the time, R.A. No. 2260 allows the payment of back salaries for the entire period of suspension in the event of exoneration. At present, there is a clear legal distinction between preventive suspension (i.e., suspension pending investigation) and suspension pending appeal.

[47] G.R. No. 84613, August 16, 1991, 200 SCRA 657.

[48] Section 35 of R.A. No. 2260 and Section 42 of P.D. No. 807.

[49] Miranda v. Commission on Audit, supra note 47, at 662.

[50] Ibid.

[51] G.R. No. 80270, February 27, 1990, 182 SCRA 785.

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[52] Id. at 788.

[53] Ibid.

[54] The Court also relied on Section 78 of Batas Pambansa Bilang 337 which required that an employee must be exonerated of the charges in order that he may be paid his back salaries. See also Yarcia v. City of Baguio, supra note 42, where the Court held that the mere reduction, on appeal, of the penalty imposed (from dismissal to a fine of six months pay), without however exonerating the employee from the charge (of dishonesty) against him, does not entitle him to back salaries.

[55] Supra note 8.

[56] Id. at 598-599.

[57] If the proper penalty imposable for the offense actually committed does not exceed one month, then there would have been no occasion for a suspension pending appeal since a decision imposing the penalty of suspension for not more than thirty days or fine in an amount not exceeding thirty days salary is final and not subject to appeal. (See Book V, Section 47, par. 2 of Executive Order No. 292; Section 7, Rule III of Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, dated April 10, 1990, as amended by Administrative Order No. 17 dated September 15, 2003 which took effect on November 19, 2003.)

[58] Supra note 10.

[59] Supra note 11.

[60] Supra note 13.

[61] De la Cruz v. CA, supra note 11, at 797.

[62] Book V, Title I, Subtitle A, Section 51 of E.O. No. 292.

[63] Book V, Title I, Subtitle A, Section 47(4) of E.O. No. 292.

[64] The Court ruled that the absence of a provision in P.D. No. 807 and later in E.O. No. 292 allowing the payment of back salaries during the period of preventive suspension, unlike in Act No. 2711 and R.A. No. 2260, evidences a legislative intent to disallow payment of back salaries for the period of preventive suspension regardless of the employee's exoneration. But the payment of back salaries per se, that is, without regard to the duration of the payment, has been consistently recognized.

[65] §864. Officer not entitled to Salary during Suspension from Office. - An officer who has been lawfully suspended from his office is not entitled to compensation for the period during which he was so suspended, even though it be subsequently determined that the cause for which he was suspended was insufficient. The reason given is "that salary and perquisites are the reward of express or implied services, and therefore cannot belong to one who could not lawfully perform such services.

[66] Hon. Gloria v. CA, supra note 13, at 762.

[67] The preventive suspension pending the investigation of the charges is not imposed as a penalty but only to enable the disciplining authority to conduct an unhampered investigation; the preventive suspension in this regard is a necessary sacrifice, which holding a public office requires.

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