

## MARTIN B. AUSTRIA, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT.

*G.R. No. 21918. January 24, 1967*

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

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### REYES, J.B.L., J.:

Petition to review the ruling of the Auditor-General, denying the money claim of the petitioner, Martin B. Austria, corresponding to the salary of his former position as principal of the Jackson High School (now Olongapo High School) at Olongapo, Zambales, for the period commencing from 15 July 1955 to 7 October 1959, inclusive.

The petitioner is a senior teacher eligible, with more than twenty (20) years of continuous service as a public school teacher on a permanent classified civil service status. However, on 29 May 1952, in a conference held at the Department of Foreign Affairs between representatives of the Philippine Government and the United States Government, it was agreed on a technical level and by way of a general proposition that the Olongapo High School shall remain as a public high school under the following pertinent conditions:

"1. In so far as matters of administration of the school are concerned, all the existing laws of the Philippines shall be applied and observed. Among such laws are those governing the appointment of teachers, curriculum, \* \* \*, discipline and tenure \* \* \*.

"a. \* \* \*.

"b. \* \* \*.

"3. With respect to the hiring of teachers, the following procedure shall be observed to the extent consistent with existing laws and administrative regulations:

"a. \* \* \*.

"b. \* \* \*.

"c. The School Board will interview the candidates nominated by the Division Superintendent of Schools and recommend to the Commanding Officer, U. S. Naval Station, Olongapo, Subic Bay, that a 12-month contract be entered into with those teachers to fill the positions.

"d. \* \* \*.

"e. \* \* \*.

"f. Contracts are renewable on a year to year basis at the option of the School Board.

"4. \* \* \*.

"5. The School Board shall provide for the maintenance and support of the Olongapo High School.

Thus, on 15 June 1954, the petitioner, in consideration of a monthly salary of P280.00, entered into a contract

with the U. S. Naval Reservation (represented by the Commanding Officer, Captain H. N. Coffin) to perform the duties of teacher for a term of 12 months starting from the date of execution of the contract.

Petitioner Austria was subsequently designated principal of the school. During his incumbency, four lady teachers filed with the Division Superintendent of Schools of Zambales an administrative complaint against the petitioner. The said official forwarded the complaint to the Director of Public Schools.

On 4 May 1955, the Acting Director of Schools informed the Division Superintendent that the evidence gathered by investigators sufficiently substantiated the guilt of petitioner Austria and that, in the opinion of the Bureau, the petitioner was no longer fit to remain as high school principal. The Acting Director also requested that the School Board be asked to give its comment and recommendation on the inadvisability of continuing the tenure of office of the petitioner for the succeeding school year.

The Division Superintendent transmitted the letter to the School Board. Acting on the letter, the Commander of Naval Forces in the Philippines, Admiral Hugh Goodwin, directed Captain Coffin to suspend the petitioner. On 13 July 1955, Captain Coffin advised the petitioner of his suspension "without prejudice" effective on that date, that his request for reconsideration of the decision of the Acting Director is his responsibility, and that his services as principal from June, 1952 to July, 1955 "have been highly satisfactory". At the same time, Captain Coffin informed the Director of Public Schools of the petitioner's no-prejudice suspension.

On 13 October 1955, the Commissioner of Civil Service rendered his decision, finding the petitioner guilty of high improper and unbecoming conduct as a school official, abuse of authority and vindictiveness, and ordered the petitioner "demoted to the rank of classroom teacher with corresponding salary reduction, transferring him to another station, severely reprimanding him, and warning him that commission of another offense will result in his separation from the service".

Petitioner appealed, but the Civil Service Board of Appeals affirmed the decision of the Commissioner on 8 March 1957.

On 18 June 1957, petitioner Austria inquired from the Secretary of Education if there was any basis for continuing his preventive suspension. After certain indorsing communications, the Division Superintendent asked the petitioner if he was willing to accept appointment as a classroom teacher in any high school other than the Olongapo High School, to which the petitioner, addressing the Director of Public Schools, replied that if possible he be given assignment outside the Division of Zambales.

In several letters, the petitioner requested the lifting of his suspension until he instituted a suit for mandamus for the recovery of his salary during the period of suspension.

On 7 October 1959, in implementation of the decision, petitioner Austria was issued an appointment to the lower position of classroom teacher in the Davao School of Arts and Trades, Davao City. The mandamus case was dismissed on 5 November 1959, at the instance of the petitioner.

Not long thereafter, Austria filed a claim for the payment of the salary of his former position as principal of the Olongapo High School from the time he was suspended up to the time he was appointed to the aforesaid lower position. As stated at the beginning, this claim was denied by the Auditor-General.

Meantime, the Philippine Government took full control of the Olongapo High School, and as of 1 December 1955, the naval authorities relinquished all control and management of the said school.

The issues that emerge in this case are: (1) Is the petitioner entitled to back salaries pursuant to Section 260 of the Revised Administrative Code? (2) Considering the terms of the agreement between the Philippine and United

States representatives and the contract entered into by the petitioner with the naval reservation authorities, which government is answerable, the Philippine Government or the United States Government, if the petitioner is at all entitled to his claim?

On the first issue, the petitioner contends that his claim falls under the coverage and protection of Section 260 of the Revised Administrative Code, which reads:

"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 295 hereof."

it being his view that by his appointment to the lower position of classroom teacher in Davao, he was reinstated and, therefore, the salary withheld during his suspension should be paid to him.

The foregoing contention of the petitioner is untenable. A "reinstatement" under the aforequoted provision refers to a reinstatement to the same position from which the subordinate officer or employee was suspended, and not merely a reinstatement in the government service; it should not be so comprehensively understood as to include demotional appointments issued pursuant to an adverse decision in an administrative case, the reason being that the "reinstatement" referred to in the law, is, under its very wording, held at par with exoneration in case reinstatement is not possible because of the death of the suspended person.

Petitioner Austria was reinstated not because he was exonerated but because he was found guilty, and his reemployment or reinstatement to a lower position was the penalty for his guilt.

Petitioner cites and quotes from *Elder vs. Brannan*, 341 U. S. 277, 288, thus: "The term (reinstatement) was not confined to reappointment to a position formerly held". But that case is entirely different from the one at bar, factually and legally; the American case involved questions concerning the precise scope of rights to employment in the federal service granted by the Veterans' Preference Act of (June 27) 1944; and, to be true, it held that 'Reinstatement'—to the extent it had any peculiar meaning in civil service parlance prior to the passage of the 1944 Act—meant reemployment of a person upon formal request of the appointing officer.

But, then, Austria contends that if he is not paid his claim for back salaries he would, in effect, be punished twice: first, by his demotion; and second, by his suspension without pay. This argument is again untenable, because it erroneously assumes that he did not give ground for his suspension or that the ground existed only after the decision against him became final, and not that it had already existed when he committed the acts complained of against him by the four lady teachers.

The denial by the respondent Auditor-General of the petitioner's claim does not impair the latter's constitutional rights because the Constitution itself allows suspension for cause as provided by law, and the law provides that an employee may be suspended pending an investigation, or by way of penalty (Sections 694 & 695, Rev. Adm. Code). Furthermore, the proper step was to appeal the ruling to the President, petitioner not being a private party.[1]

The fact that the petitioner actually suffered suspension for more than two (2) months was due to the difficulty of implementing the decision demoting him, and it is not practicable, well-nigh impossible, for the government to be ready at all times to provide a vacancy for a demoted public officer.

Since, under the foregoing considerations, the respondent is not bound to pay the claim, a resolution of the second issue is moot and unnecessary in the disposition of the instant case.

For the foregoing reasons, the ruling under review is hereby affirmed, with costs against the petitioner.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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[1] Section 2, Commonwealth Act 327; Sambo vs. Auditor General, L -12548, February 27, 1959.

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