

EDUARDO G. BAUTISTA, PETITIONER, VS. GENERAL MACARIO PERALTA, JESUS C. PERLAS, OLEGARIO CANTOS, ET AL., RESPONDENTS.*G.R. No. 21967. September 29, 1966*

Ponente: MAKALINTAL, J.

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Petitioner Eduardo G. Bautista, an employee of the National Waterworks and Sewerage Authority (NWSA), was charged administratively with dishonesty and violation of office regulations. He was suspended, pending investigation, on May 30, 1958. On October 8, 1958, the Civil Service Commission found him guilty of the charge and ordered his dismissal, effective as of the date of his suspension. He appealed to the Civil Service Board of Appeals, which rendered its decision on May 13, 1963, the dispositive portion of which reads as follows:

"In view of all the foregoing, the appealed decision is hereby modified In the sense that respondent-appellant is suspended for two months without pay, chargeable to his preventive suspension."

On June 3, 1963 the NWSA filed a motion for reconsideration of the Board's decision, but the motion was denied on the following June 30. On September 3, 1963 the NSWA reinstated petitioner but without back wages, and three days later he reported for duty. He made representations with the officials of the NWSA for the payment of back salaries and other rights and privileges during the entire period he was under suspension, and receiving no favorable action, filed the instant petition for mandamus directly with this Court, praying that "judgment be rendered commanding the respondents (as members of the Board of Directors of NWSA) to pay the petitioner immediately the following sums: (a) P14,708.56 as back wages, but deducting therefrom the amount of P458.00, representing the penalty of suspension for two months without pay imposed upon the petitioner, leaving a balance of the sum of P14,250.56 as back wages still due him; P1,500.00 as living allowance; P20,000.00 as damages; P3,000.00 as attorney's fees; legal interest from May 13, 1963 until fully paid; and the costs of this suit."

The issue is whether or not under the decision of the Civil Service Board of Appeals payment of the abovementioned amounts to petitioner is such a duty specifically enjoined upon respondents by law as to be properly enforceable by means of the peremptory writ of mandamus. At the very outset we rule out from the scope of this remedy the claims for living allowance, damages, and attorney's fees. There is nothing in the petition itself, or in the decision of the Civil Service Board of Appeals which is sought to be implemented, to show that petitioner is so clearly entitled to these items claimed by him that mandamus should issue for their payment. An ordinary civil action would be the appropriate remedy, wherein not only the question of petitioner's right but also the extent of recovery, if any, may be litigated and proved.

We shall therefore consider only the claim to back salaries, as to which there need be no evidence adduced, the only question being whether or not the obligation to pay them is implicit in the decision of the Civil Service Board of Appeals, an affirmative answer to which question would make such payment a matter of legal duty on the part of respondents. We find the said decision plain enough. It imposes the penalty of suspension for two months

without pay, and makes it chargeable to the period of preventive suspension, which at the time the decision was promulgated had already lasted almost five years. Preventive suspension in administrative cases is not a penalty in itself. It is designed merely as a measure of precaution so that the employee who is charged may be separated for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated. Thus if he is exonerated the law provides that he shall be restored to his position with full pay for the period of his suspension. (Sec. 35, R. A. 2260.) This provision of course does not mean that reinstatement should not follow except in the event of exoneration. The penalty of suspension - which necessarily is for a fixed period - also contemplates the same result after the penalty has been served.

In the particular case of petitioner herein, the penalty imposed by the Civil Service Board of Appeals was in effect served by him during the first two months of his preventive suspension. His reinstatement during the rest of the period was no longer physically possible, but there is no inherent obstacle to his receiving the back salaries corresponding to such period. Denial of the back salaries would amount to an amendment of the decision of the Civil Service Board of Appeals, in effect increasing the two-month suspension meted out to him and converting the preventive suspension into the penalty itself. It would then make no difference, as far as petitioner is concerned, whether the Board had suspended him for two months or for two years, or indeed for any length of time provided it did not exceed the period of preventive suspension already undergone. These implications cannot reasonably be read into the Board's decision in this case.

Respondents submit that mandamus is not the proper remedy even with respect to the claim for back salaries. Ordinarily, to be sure, a money claim does not lend itself to this kind of action, particularly if the claim is of a contractual nature. However, aside from the fact that the claim here does not arise from contract, certain events supervened after the promulgation of the decision of the Civil Service Board of Appeals, which further established petitioner's clear legal right to his back salaries. It appears that upon consultation by the General Manager of the NWSA, the Government Corporate Counsel rendered an opinion dated July 19, 1963, advising the former to implement the said decision, the same having already become final; and that in successive endorsements signed respectively by the Undersecretary of Public Works and Communications (February 20, 1964), by the Commissioner of Civil Service (May 6, 1964), and by the Deputy Auditor General (June 11, 1964), these officials ruled that under the decision of the Civil Service Board of Appeals petitioner herein was entitled to his back salaries pursuant to Section 260 of the Revised Administrative Code, as amended. The final (8th) indorsement of the Undersecretary of Public Works and Communications dated June 18, 1964, reads as follows:

"Respectfully returned to the General Manager, National Waterworks and Sewerage Authority, Manila, hereby approving the claim for payment of the salary of Mr. Eduardo D. Bautista, Capataz-Timekeeper, Engineering Department, that Authority, during the period he was out of the service from May 30, 1958, the day he was dismissed from the service to September 15, 1963, the day immediately preceding his reinstatement, minus the period of two months equivalent to the punitive suspension imposed by the Civil Service Board of Appeals in its decision, in view of the 6th indorsement of the Commissioner of Civil Service and the next preceding indorsement by the Deputy Auditor General."

This last directive of the Undersecretary of Public Works and Communications removes any doubt as to the character of the duty of respondents in the premises and as to the propriety of the remedy pursued by petitioner in this case.

WHEREFORE, the writ prayed for is granted insofar as the back salaries claimed by petitioner are concerned, and respondents or their successors now in office are ordered to pay the same, with interest at the legal rate from the date of his reinstatement until actual payment, and costs. The writ is denied with respect to the other claims.

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

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