

**AMADO G. SORIANO AND RAFAEL B. GARCIA, PETITIONERS, VS.
HON. RUBEN B. ANCHETA, IN HIS PERSONAL CAPACITY AND AS
COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
RESPONDENT.**

G.R. No. 57589. March 18, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to mandate the Commissioner of Internal Revenue to restore the petitioners to their former positions in the Bureau of Internal Revenue.

Petitioners Rafael B. Garcia was Supervising Revenue Examiner III and Amado G. Soriano was Supervising Revenue Examiner II when they were purged from the government service in 1975. They filed petitions for reinstatement with the Appeals Committee which was created in the Office of the President but the committee was unable to act on their petitions because of time constraints. Messrs. Garcia and Soriano later revived their petitions with the Office of the President and in a decision dated May 19, 1979, rendered by Presidential Executive Assistant Jacobo C. Clave "By authority of the President" the following was adjudged:

"In view of the foregoing, Messrs. Rafael B. Garcia and Amado G. Soriano are hereby reinstated to their positions of Supervising Revenue Examiner III and Supervising Revenue Examiner II, respectively, in the Bureau of Internal Revenue if the same are still vacant, and if not then to equivalent positions in that Bureau." (Rollo, p. 18.)

The decision recited, among other things, that when Messrs. Garcia and Soriano were separated from the service they had no pending administrative or criminal cases against them.

A petition of the Minister of Finance dated July 24, 1979, for reconsideration of the decision was denied on January 14, 1980, by Presidential Executive Assistant Clave again "By authority of the President."

Messrs. Soriano and Garcia wrote two letters dated May 13, 1980, and January 31, 1981, to Commissioner Ruben B. Ancheta. In both letters they requested reinstatement as directed in the decision in their favor. However, Commissioner Ancheta wrote back to each of them that:

"After a careful evaluation of your records pertaining to your petition, we find no justifiable reason to disturb the decision dismissing you from the service; hence, your said petition is hereby denied." (Rollo, pp. 35-36.)

The letters of Commissioner Ancheta were dated April 13, 1981, for Soriano and April 14, 1981, for Garcia.

The action of Commissioner Ancheta prompted the filing of the instant petition on August 4, 1981, for mandamus and other relief.

The respondent was required to comment which he did. To the comment was annexed a copy of the respondent's memorandum dated May 22, 1980, to the President. [This document shall be re-ferred hereafter as the

memorandum.] The memorandum said in part:

"So as not to render nugatory and meaningless the government's program of reform to weed out those who are notoriously undesirable, particularly in a very sensitive and critical organization as the BIR, and to give finality to the various directives of dismissal and separation, it is respectfully recommended that no reinstatement be ordered for those purged from this Bureau. Except court orders, reinstatement orders so far issued should be likewise revoked." (Rollo, p. 51.)

In his own handwriting, the President wrote the following on the memorandum:

"Approved - Hold any action on reinstatement orders from my office not signed by me.

"All cases should be reviewed on the merits of each case." (Rollo, p. 50.)

On October 12, 1981, the Court resolved to dismiss the petition for lack of merit.

The petitioners sought reconsideration which was granted by setting aside the resolution of October 12, 1981. At the same time the petition was given due course.

After a review of the pleadings and a scrutiny of the memoranda in support thereof, the Court holds that the petitioners have not shown clear entitlement to remedy which they have invoked.

The following points are not in issue: (a) the legality of the petitioners' separation from the service in 1975; (b) the power of the President to countermand the action of Presidential Executive Assistant Clave; and (c) the authenticity, as distinguished from the efficacy, of the memorandum.

The petitioners impugn the efficacy of the memorandum on the following grounds:

(a) That it was ante-dated and was prepared subsequent to the filing of the petition so as to divest this Court of its acquired jurisdiction.

This contention is unsupported by any evidence. Against it is the presumption that a writing is truly dated. (Rules of Court, Rule 131, Sec. 5 [u].) The petitioners assert that if the memorandum had existed as early as May 22, 1980, Commissioner Ancheta should have mentioned it in his letters to them both dated April 1981. The answer to this assertion is that Commissioner Ancheta had no duty to inform the petitioners about the existence of the memorandum.

(b) That the President was not informed of the Clave decision when he wrote the note. This is error for the memorandum states, *inter alia*, the following:

"Recently, a number of these officials and employees have again sought reinstatement stressing among others the non-existence of an administrative case. Among others, the Presidential Executive Assistant has given due course to some petitions for reinstatement on the ground that there were actually no administrative cases filed against those separated from the service. Reinstatement along these lines would necessarily allow the reinstatement of practically most of those purged." (Rollo, p. 50.)

We are satisfied that the Clave decision in favor of the petitioners had been revoked by the memorandum and since there is no showing that the President has signed an order reinstating them, the respondent has no ministerial duty to reinstate them.

WHEREFORE, the petition is dismissed for lack of merit. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., took no part.

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