

AMELIA C. CASIBANG, PETITIONER, VS. THE PHILIPPINE TOBACCO ADMINISTRATION AND THE COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 59840. March 05, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case involves Amelia C. Casibang's claim for back salaries and damages due to the abolition of her position in the Philippine Tobacco Administration (PTA).

Casibang, a general clerical civil service eligible, was employed as budget aide in November, 1959 by the PTA, Circumferential Road, Diliman, Quezon City. She was promoted to acting budget examiner I in December, 1960. She was appointed permanent budget examiner I effective October 1, 1964.

In 1964, she was detailed at the PTA branch office at Tuguegarao, Cagayan. On January 20, 1970, the PTA board abolished 209 positions, including her position of budget examiner, due to lack of funds and lack of work. The PTA's appropriation for operating expenses was reduced by Republic Act No. 5555 to one million pesos (Annex B).

She complained of the abolition to the Civil Service Commission. The Commission in 1973 sustained the abolition because it was made in good faith (*Cruz vs. Primicias*, L-28573, June 13, 1968, 23 SCRA 998). The Commission relied on the allegation of the PTA corporate treasurer that a budget examiner in a provincial office was not necessary and "could be dispensed with without detriment or impairment to the public service" (Annex C).

On motion for reconsideration, the Commission, four years later or on August 12, 1977, ordered the PTA to take steps to restore her position (p. 27, Rollo). Com-plying with that order, the PTA reinstated Casibang as budget examiner at P6,240 per annum effective October 1, 1977 (p. 30, Rollo).

She then filed a claim for P29,532.93 as back salaries from February 16, 1970 to September 30, 1977. The PTA board of directors and the Civil Service Commission approved the claim. However, the PTA changed its mind. It asked the Commission to revoke its ruling because it was contrary to the doctrine of "a fair day's wage for a fair day's labor". The request was denied by the Commission.

The matter was referred to the Government Corporate Counsel. He opined that, as Mrs. Casibang is presumed to have sought employment elsewhere during the period that she was out of the service of PTA, if only to support herself and her family, she may be given at most back salaries for three years (p. 135, Rollo).

Pursuant to the agreement between her and the PTA, she was paid P12,323.46 as net back salaries for three years without prejudice to her appeal. The Civil Ser-vice Commission reiterated its view that full payment of back salaries be made to her.

She submitted a new voucher for P19,531 for the balance of her back salaries. The corporate auditor indorsed the

matter to the Commission on Audit. In Opinion No. 311 dated January 29, 1981 the COA ruled that the back salaries of Casibang may not be charged against the PTA funds (Back of p. 64, Rollo). She asked for reconsideration of that opinion. The COA denied it for lack of merit in its first indorsement of May 26, 1981. At the same time, it questioned the payment of three years' back salaries to Casibang (p. 69, Rollo).

The corporate auditor requested the PTA to ask Casibang to refund the said salaries (p. 70, Rollo). The PTA directed Casibang to make the refund in its letter of January 11, 1982 which enclosed a copy of COA's basic decision of January 29, 1981. She received the PTA letter on January 14, 1982 (p. 133, Rollo).

Fifty- three days later, or on March 9, 1982, she filed her instant petition for certiorari and mandamus. She prayed that the opinions of the COA be declared void.

The Solicitor General appeared as counsel for the COA. However, in his comment and memorandum he expressed the view that Casibang was entitled to back salaries, as held by the Civil Service Commission, and that the opinion of the COA should be set aside (p. 130, Rollo).

The PTA, through the Government Corporate Counsel, submits that the payment of the three years' back salaries to Casibang was legal and she should not be made to refund that amount but her claim for additional back salaries and damages should be denied.

The PTA in its memorandum raised the preliminary question of the timeliness of the appeal as a jurisdictional matter. As already noted above, Casibang filed her instant petition for certiorari fifty-three (53) days after notice of that decision. It was filed out of time and should not have been entertained.

Section 50 of the Government Auditing Code, Presidential Decree No. 1445 (1978), requires that the decision of the COA may be appealed to this Court within the reglementary thirty-day period from notice of the decision.

Casibang's petition was erroneously given due course because of her counsel's misrepresentation that she received a copy of the decision on February 17, 1982. That error was pointed out in the PTA's memorandum. It was not refuted by the petitioner who did not file any memorandum at all.

It has been held that failure to appeal the decision of the Auditor General within the thirty-day period makes it final and is a bar to the action for its review (*Mañgonon vs. Republic*, 114 Phil. 604; *Lacson vs. Auditor General*, 107 Phil. 921). The remedy of mandamus included in the petition is un-availing because the COA's duty to pass upon petitioner's claim was not ministerial (*Lamb vs. Phipps*, 22 Phil. 156).

WHEREFORE, the instant petition is dismissed with costs against the petitioner.

SO ORDERED.

Makasiar, Acting C.J., (Chairman), Concepcion, Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

Escolin, J., no part.

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