

**VICENTE GARCIA, PETITIONER, VS. THE HONORABLE CHAIRMAN,
COMMISSION ON AUDIT, THE HONORABLE MINISTER, LAND
TRANSPORTATION AND COMMUNICATIONS, THE REGIONAL
DIRECTOR, TELECOM REGIO...***G.R. No. 75025. September 14, 1993*

Ponente: BELLOSILLO, J.

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Petitioner comes to us on a petition for review on certiorari of the decision of 23 July 1985 of respondent Commission on Audit (COA) denying his claim for payment of back wages, after he was reinstated to the service pursuant to an executive clemency. He prays for the extraordinary remedy of mandamus against public respondents to enforce his claim.

Petitioner was a Supervising Lineman in the Region IV Station of the Bureau of Telecommunications in Lucena City. On 1 April 1975, petitioner was summarily dismissed from the service on the ground of dishonesty in accordance with the decision of the then Ministry of Public Works, Transportation and Communications in Adm. Case No. 975 for the loss of several telegraph poles which were located at the Sariaya-Lucena City and Mauban-Sampaloc, Quezon, telecom lines. Petitioner did not appeal from the decision.

Based on the same facts obtaining in the administrative action, a criminal case for qualified theft was filed against petitioner with the then Court of First Instance (now Regional Trial Court) of Quezon. On 23 January 1980, the trial court rendered its decision acquitting petitioner of the offense charged.

Consequently, petitioner sought reinstatement to his former position in view of his acquittal in the criminal case. In an indorsement dated 7 April 1980, petitioner's request to be reinstated was denied by the Bureau of Telecommunications. Hence, petitioner pleaded to the President of the Philippines for executive clemency.

On 26 August 1981, acting on the favorable indorsements of the then Ministry of Transportation and Communications and the Civil Service Commission, Deputy Presidential Executive Assistant Joaquin T. Venus, Jr., by authority of the President, per Resolution No. O.P. 1800, granted executive clemency to petitioner.

Petitioner thereafter filed with respondent COA a claim for payment of back salaries effective 1 April 1975, the date of his dismissal from the service. This was denied by the COA in its 5th Indorsement dated 12 October 1982 on the ground that the executive clemency granted to him did not provide for the payment of back salaries and that he has not been reinstated in the service.

It appears that petitioner was recalled to the service on 12 March 1984 but the records do not show whether petitioner's reinstatement was to the same position of Supervising Lineman.[1]

Petitioner again filed a claim to recover his back salaries for the period from 1 April 1975, the date of his dismissal, to 12 March 1984, when he was reinstated. In Decision No. 362 embodied in its 3rd Indorsement dated

23 July 1985, respondent COA denied the claim stating that the executive clemency was silent on the payment of back wages and that he had not rendered service during the period of his claim.

Aggrieved, petitioner appealed the COA decision of 23 July 1985 to the Office of the President. On 21 April 1986, Deputy Executive Secretary Fulgencio S. Factoran, Jr., by authority of the President, denied the appeal "due to legal and constitutional constraint,"[2] holding that this Court is the proper forum to take cognizance of the appeal on certiorari from the decision of the COA, citing Art. XII-(D), Sec. 2, par. 2, of the 1973 Constitution (now Art. IX-[A], Sec. 7, of the 1987 Constitution).

Hence, petitioner filed the instant petition on the issue of whether he is entitled to the payment of back wages after having been reinstated pursuant to the grant of executive clemency.

In his comment to the petition, the Solicitor General recommends that the petition be given due course and the petitioner be awarded back wages to be determined in the light of existing laws and jurisprudence. The Solicitor General submits that the award is implicit in the grant of executive clemency, the ultimate objective of which is to accord full justice to petitioner.

On the other hand, the COA asks this Court to deny the petition for the following reasons: (a) petitioner's acquittal in the criminal case did not necessarily free him from administrative liability; (b) petitioner's unexplained failure to appeal the decision in the administrative case was tantamount to a waiver or renunciation of his right to back wages; (c) the executive clemency was granted to petitioner for the purpose of reinstatement only since it was silent on the matter of back wages; (d) the award of back wages is allowed only if the respondent is exonerated from the administrative charge or that his suspension or dismissal is declared illegal or unjustified by the court; and, (e) petitioner did not render any service during the period before his reinstatement, hence, he is not entitled to back wages based on the "no service, no pay" rule.

The petition is meritorious.

Every civilized country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity, in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality and in that attribute of Deity whose judgments are always tempered with mercy.[3]

Our Constitution reposes in the President the power and the exclusive prerogative to extend executive clemency under the following circumstances:

"Except in cases of impeachment or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

"He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress."[4]

From among the different acts of executive clemency spelled out above, the clemency granted to petitioner in the instant case partakes of the nature of an executive pardon. A reading of Resolution No. O. P. 1800 partly quoted hereunder is enlightening:

"In a 3rd Indorsement dated September 5, 1980, the Director of Telecommunications interposed no objection to the petition, while the Minister of Transportation and Communications, in his 4th Indorsement dated November 17, 1980, favorably recommended the grant of executive clemency to petitioner for the reason that 'while it is a rule that an administrative case is separate and distinct from a criminal case and an acquittal in the latter case does not ipso facto result in the exoneration in the former case, yet an exception could arise if the basis for the acquittal was the innocence of the accused as in the case of petitioner Garcia.'

"Asked for comment pursuant to Section 43 of Presidential Decree No. 807, the Civil Service Commission recommends the grant of executive clemency to petitioner in view of the findings of the court that -

'instead of coming forward to the defense of the accused who actually was authorized to uproot or recover the poles in question and of commending the latter for his high sense of responsibility in preventing losses to the government, said high officials had even the temerity to disown and deny the authority they gave to the accused resulting in his separation from the service and having him all alone in defending himself against the accusation of the very government he tried to protect.'

"After a careful study, this Office is inclined to grant executive clemency to petitioner in the light of the decision of the court acquitting him of the crime of qualified theft which was based on the same acts obtaining in Administrative Case No. 975 against him, coupled with the favorable recommendation of the Minister of Transportation and Communications and the Civil Service Commission.

"In view of the foregoing, petitioner Vicente Garcia is hereby granted executive clemency."[5]

Time and again this Court has unfolded the effects of a pardon upon the individual to whom it is granted. In *Monsanto v. Factoran*[6], we have firmly established the general rule that while a pardon has generally been regarded as blotting out the existence of guilt so that in the eyes of the law the offender is as innocent as though he never committed the offense, it does not operate for all purposes. The very essence of a pardon is forgiveness or remission of guilt and not forgetfulness. It does not erase the fact of the commission of the crime and the conviction thereof. Pardon frees the individual from all the penalties and legal disabilities and restores to him all his civil rights. Unless expressly grounded on the person's innocence, it cannot bring back lost reputation for honesty, integrity and fair dealing. The pardoned offender regains his eligibility for appointment to public office which was forfeited by reason of the conviction of the offense. But since pardon does not generally result in automatic reinstatement because the offender has to apply for reappointment, he is not entitled to back wages.

But, stated otherwise, if the pardon is based on the innocence of the individual, it affirms this innocence and makes him a new man and as innocent as if he had not been found guilty of the offense charged.[7] When a person is given pardon because he did not truly commit the offense, the pardon relieves the party from all punitive consequences of his criminal act, thereby restoring to him his clean name, good reputation and unstained character prior to the finding of guilt.

In the case at bar, petitioner was found administratively liable for dishonesty and consequently dismissed from the service. However, he was later acquitted by the trial court of the charge of qualified theft based on the very same acts for which he was dismissed. The acquittal of petitioner by the trial court was founded not on lack of proof beyond reasonable doubt but on the fact that petitioner did not commit the offense imputed to him. Aside from finding him innocent of the charge, the trial court commended petitioner for his concern and dedication as a public servant. Verily, petitioner's innocence is the primary reason behind the grant of executive clemency to him, bolstered by the favorable recommendations for his reinstatement by the Ministry of Transportation and Communications and the Civil Service Commission.

The bestowal of executive clemency on petitioner in effect completely obliterated the adverse effects of the administrative decision which found him guilty of dishonesty and ordered his separation from the service. This can be inferred from the executive clemency itself exculpating petitioner from the administrative charge and thereby directing his reinstatement, which is rendered automatic by the grant of the pardon. This signifies that petitioner need no longer apply to be reinstated to his former employment; he is restored to his office ipso facto upon the issuance of the clemency.

Petitioner's automatic reinstatement to the government service entitles him to back wages.[8] This is meant to

afford relief to petitioner who is innocent from the start and to make reparation for what he has suffered as a result of his unjust dismissal from the service. To rule otherwise would defeat the very intention of the executive clemency, i.e., to give justice to petitioner. Moreover, the right to back wages is afforded to those who have been illegally dismissed and were thus ordered reinstated or to those otherwise acquitted of the charges against them.[9] There is no doubt that petitioner's case falls within the situations aforementioned to entitle him to back wages.

Further, it is worthy to note that the dismissal of petitioner was not the result of any criminal conviction that carried with it forfeiture of the right to hold public office, but is the direct consequence of an administrative decision of a branch of the Executive Department over which the President, as its head, has the power of control. The President's control has been defined to mean "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter." [10] In pardoning petitioner and ordering his reinstatement, the Chief Executive exercised his power of control and set aside the decision of the Ministry of Transportation and Communications. The clemency nullified the dismissal of petitioner and relieved him from administrative liability. The separation of the petitioner from the service being null and void, he is thus entitled to back wages.

After having been declared innocent of the crime of qualified theft, which also served as basis for the administrative charge, petitioner should not be considered to have left his office for all legal purposes, so that he is entitled to all the rights and privileges that accrued to him by virtue of the office held, including back wages.[11]

Established jurisprudence fixes recovery of back wages to a period of five (5) years to be paid an illegally dismissed government employee who has been ordered reinstated.[12] The cases heretofore decided by this Court show that petitioners therein were employees of local governments who were removed from office by their local officials. The reasons given for their removal were abolition of office or position, reduction of work force, or lack of funds on the part of the local governments concerned, which reasons were found by this Court to be either devoid of factual basis or not sufficiently proven, otherwise, their dismissal would have been valid and justified. In contrast, the case before us is different, involving as it does circumstances that impel us to deviate from the general rule previously laid down on the recovery of back wages for five (5) years. Petitioner's reinstatement in the instant case which was ordered pursuant to a grant of executive clemency was effected not because of lack of sufficient proof of his commission of the offense but that, more importantly, he did not commit the offense charged. Verily, law, equity and justice dictate that petitioner be afforded compassion for the embarrassment, humiliation and, above all, injustice caused to him and his family by his unfounded dismissal. This Court cannot help surmising the painful stigma that must have caused petitioner, the incursion on his dignity and reputation, for having been adjudged, albeit wrongfully, a dishonest man, and worse, a thief. Consequently, this Court finds it fair and just to award petitioner full back wages from 1 April 1975 when he was illegally dismissed, to 12 March 1984 when he was reinstated. The payment shall be without deduction or qualification.

WHEREFORE, the petition is GRANTED. The decision of respondent Commission on Audit dated 23 July 1985 is REVERSED and SET ASIDE, and a new one entered ordering public respondents, the Chairman of the Commission on Audit, the Minister (now Secretary) of Land Transportation and Communications, the Regional Director of Telecom Regional Office No. IV, or whoever may be sitting in office in their stead, to pay the full amount of petitioner's back salaries from 1 April 1975 to 12 March 1984 based on his latest salary scale.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] Rollo, p. 62.

[2] Rollo, p. 16.

[3] 59 Am Jur 2d, Pardon and Parole, Sec. 1.

[4] Art. VII, Sec. 19, 1987 Constitution.

[5] Rollo, pp. 21-22.

[6] G.R. No. 78239, 9 February 1989, 170 SCRA 190.

[7] Ibid.

[8] Sabello v. Department of Education, Culture & Sports, G.R. No. 87687, 26 December 1989, 180 SCRA 623.

[9] Ibid.

[10] Mondano v. Silvosa 97 Phil 143 (1955).

[11] Macabuhay v. Manuel, No. L-40872, 29 December 1980, 101 SCRA 834; Cristobal v. Melchor, No. L--43203, 29 December 1980, 101 SCRA 857; Tañada v. Legaspi, No. L-22537 31 March 1965, 13 SCRA 566.

[12] Ginzon v. Municipality of Murcia, No. L-46585, 8 February 1988, 158 SCRA 1; Gementiza v. Court of Appeals, Nos. L-41717-33, 12 April 1982, 113 SCRA 477; Balquidra v. CFI, No. L-40490, 28 October 1977, 80 SCRA 123; Cristobal v. Melchor, *supra*.

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