

**PONCIANO M. LAYUG, PETITIONER, VS. LOURDES QUISUMBING, AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE & SPORTS AND TEOFILO E. GOMEZ, AS REGIONAL DIRECTOR, DEPART-MENT OF E...**

*G.R. No. 82272. February 07, 1990*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

The petitioner has been a high school teacher of English and Biology in the Davao Del Sur National High School in Digos, Davao Del Sur since 1971.

On May 19, 1986, he filed an administrative charge of harassment and oppression against his school principal, respondent Ramon C. Presto.

On August 31, 1987, Presto filed countercharges of dishonesty, incompetence, insubordination and of being notoriously undesirable upon complaints of students, teachers and parents who demonstrated for two days against the petitioner on August 20-21, 1987. With the approval of the Secretary of the Department of Education, Culture & Sports, Lourdes Quisumbing, petitioner was preventively suspended by the DECS Regional Director, respondent Teofilo Gomez, effective on August 21, 1987 (p. 16, Rollo). On September 2, 1987, Secretary Quisumbing issued an order also suspending him (p. 17, Rollo).

In view of Section 42 of Presidential Decree No. 807, providing that when the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within ninety (90) days after the date of suspension, "the respondent shall be automatically reinstated in the service," and, as his written request for reinstatement dated February 3, 1988 addressed to Quisumbing and Gomez (p. 18, Rollo) were not heeded by them, petitioner filed against Secretary Quisumbing and Regional Director Gomez in this Court on March 15, 1988, a petition for certiorari, prohibition, injunction and/or mandamus with prayer for the issuance of a temporary restraining order and/or writ of preliminary prohibitory and mandatory injunction, praying that they be ordered to reinstate him and pay his salaries from December 2, 1987 when he was supposed to have been reinstated.

Respondent Gomez's comment on the petition alleged that it was petitioner Layug himself who had delayed the investigation of the consolidated administrative cases (his charges against Presto and the latter's counter-charges against him) by his numerous motions for postponement, his absences at the scheduled hearings, and, finally, his motion to transfer the hearing from the regional office of the DECS to the regional office of the Civil Service Commission as he feared that the DECS investigators would not act with "cold neutrality" in the case (pp. 44-68, Rollo).

On October 13, 1988, an order was issued by respondent Secretary Quisumbing lifting the preventive suspension of Layug and "reinstating him to the service effective immediately" (p. 88, Rollo). The Solicitor General forthwith

filed in this Court a manifestation and motion praying that the petition be dismissed for having become moot and academic (p. 88, Rollo). A resolution to that effect was issued by this Court on October 26, 1988 (p. 90, Rollo).

Upon receipt of the order for petitioner's reinstatement on October 28, 1988, the school principal, Ramon Presto, assigned petitioner to the YDT/CAT Department for his subject load. In his memorandum of assignment to petitioner, Presto explained that only YDT/CAT subjects were available for assignment to him as all the other subjects were already assigned to other teachers and changing instructors in mid-term would not be good for the students (Presto's Comment, Annex R). Petitioner, however, refused to accept his YDT/CAT assignment as he insisted on handling English and Biology subjects. By letter dated November 9, 1988, addressed to respondent Director Gomez, Presto reiterated the reasons why petitioner could not be assigned to teach his desired subjects, and therefore recommended his temporary assignment at the Guidance Counsellor's Office considering that he is a Psychology Major (Bachelor of Arts [Id., Annex 5]).

Finding Presto's explanation and recommendation to be well taken, respondent Director Gomez ordered petitioner's temporary assignment at the Guidance Counsellor's Office with the same permanent status and compensation as secondary public school teacher (Id., Annex T). This assignment, however, was again rejected by herein petitioner. Thus, Presto was constrained to issue another memorandum, this time warning petitioner that his separation would be recommended should he still fail to comply with the assignment order within five (5) days from receipt of the said memorandum. Petitioner received the memorandum on January 3, 1989 and complied therewith after two (2) days, or, on January 5, 1989.

Before that, on November 14, 1988, petitioner filed an Urgent Manifestation and Motion praying this Court to order his reinstatement to his former position as classroom teacher in English and Biology with six (6) teaching hours per day, Monday to Friday, and that the respondents be ordered to pay his back salaries from September 2, 1987 amounting to P24,219 as of October 31, 1988 (pp. 95-99, Rollo).

On November 17, 1988, petitioner filed a petition to cite respondents Quisumbing and Gomez, and also Ramon Presto, in contempt of court (pp. 101-106, Rollo).

On November 23, 1988, he filed an Urgent Motion for Reconsideration of our resolution dated October 26, 1988. On November 29, 1988, he filed an "Urgent Motion to Lift the Entry of Judgment" (pp. 107-110, Rollo).

On April 3, 1989, we set aside our resolution of October 26, 1988 and the entry of judgment, and directed the petitioner to file an amended petition impleading Presto as additional respondent so that the court may acquire jurisdiction over him. We ordered the respondents to comment on the petitioner's amended petition and motions (pp. 112-115, Rollo).

Petitioner filed an amended petition on May 10, 1989 (pp. 116-141, Rollo). Presto filed his comments on July 20, 1989 (pp. 175-220, Rollo) while the Solicitor General filed his consolidated comment for respondents Quisumbing and Gomez on September 6, 1989 (pp. 238-249, Rollo).

We have deliberated on the amended petition and motions, and the consolidated comments thereon and have resolved them as follows:

1. The petition for reinstatement has become moot in view of the Secretary's order dated October 13, 1989 lifting petitioner's suspension and reinstating him to the service. Petitioner's contention, that he should be reinstated to his former assignment as a teacher of English and Biology subjects, has no legal basis. The law only provides that he shall be reinstated in the service, i.e., to his position as a high school teacher appearing in his appointment. Section 11 of the Education Act of 1982 provides:

"Sec. 11. Special Rights and/or Privileges of Teaching or Academic Staff. - Further to the rights mentioned in

the preceding Section, every member of the teaching or academic staff shall enjoy the following rights and/or privileges:

"1. The right to be free from compulsory assignments not related to their duties as defined in their appointments or employment contracts, unless compensated therefor, conformably to existing law.

"xxx xxx xxx."

(B.P. Blg. 232.)

Evidently, a teacher may not be compelled to accept, and neither may he demand to be given, an assignment not specified in his appointment.

The selection of the subjects which petitioner may teach is a matter for his principal and the DECS regional director to determine based on his qualifications and the prevailing conditions in the school. As explained by respondent Presto, the English and Biology subjects which Layug used to teach had been assigned to other teachers after Layug's suspension, and, since changing teachers in the middle of the school year would be prejudicial to the students, petitioner was assigned to teach YDT/CAT subjects instead (which he rejected). As the petitioner is a psychology major, he was detailed to the Guidance Counsellor's Office where he reported for work on January 5, 1989.

In view of the foregoing, petitioner's motion to declare the respondents in contempt of court is baseless. They have not disobeyed any order of this Court.

2. Petitioner's claim for back salaries corresponding to the period of his suspension, is untenable because his suspension was authorized by law and he has not yet been absolved from the administrative charges against him (F.B. Reyes vs. J. Hernandez, 71 Phil. 39; Villamor vs. Lacson, 12 SCRA 418). The extension of his suspension beyond the 90-day statutory limit was due to the delay in terminating the administrative investigation caused by his own absences, his motions for postponement, and his request to transfer the hearings to the regional office of the Civil Service Commission. Those interruptions of the investigation caused by his own fault or upon his own request "shall not be counted in computing the suspension" (Sec. 42, P.D. 807).

3. Finally, in view of petitioner's refusal, upon his reinstatement to the service, to accept the assignments given him by the regional director (Gomez) and his principal (Presto), he is not entitled to receive salaries for his period of idleness. "As you work, so shall you earn" (Villamor vs. Lacson, 12 SCRA 418, Sales vs. Mathay, Sr., 129 SCRA 180).

WHEREFORE, the amended petition and the motion to declare the respondents in contempt and to direct them to reinstate the petitioner as a teacher of English and Biology, and to pay his back salaries are denied. Petitioner is entitled to collect salaries only from January 5, 1989 when he reported for work. Costs against the petitioner.

### **SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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