

## **ENGINEER LAMBERTO MIRANDA, PETITIONER, VS. COMMISSION ON AUDIT REPRESENTED BY EUFE-MIO DOMINGO, ALBERTO P. CRUZ AND BARTOLOME C. FERNANDEZ, JR., RESPONDENTS.**

*G.R. No. 84613. August 16, 1991*

Ponente: PARAS, J.

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### **PARAS, J.:**

This is a petition for certiorari questioning the decision\* dated June 20, 1988 of the Commission on Audit which disallowed in audit Lamberto Miranda's claim for payment of his salary as City Engineer of Pagadian City during the period of his suspension from June 1, 1978 to May 21, 1986.

It appears on record that sometime in 1977, Engineer Lamberto Miranda, City Engineer of Pagadian City, was administratively charged with (1) malversation of Barangay funds; (2) overpricing of hand tools for barangay roads; (3) refusal to cooperate with local officials in the prosecution of barangay projects; and (4) electioneering. In a telegram dated June 2, 1978 then President Marcos, thru Executive Secretary Juan Tuvera, ordered the suspension of Engineer Miranda pending the investigation of the aforesaid charges. Engineer Pedro Acedillo was designated by then President Marcos as acting City Engineer of Pagadian City vice Engineer Miranda. A committee, headed by Colonel Manalang, to conduct an investigation was created by Admiral Romulo Espaldon pursuant to the directive of then President Marcos.

On May 7, 1986, upon the recommendation of then Minister Rogaciano Mercado of the Ministry (now Department) of Public Works and Highways, Executive Secretary Joker Arroyo by authority of the President, lifted the preventive suspension of Engineer Miranda. On May 22, 1986, Engineer Miranda re-assumed his position as City Engineer of Pagadian City.

On October 7, 1986, Minister Mercado issued a resolution dropping for lack of evidence the administrative case against Engineer Miranda.

As payment of Engineer Miranda's claim for back salaries, medicare contribution, life and retirement insurance premiums for the period June 1, 1978 to May 21, 1986, the Sangguniang Panglungsod of Pagadian City appropriated the sum of P252,539.00 from the Infrastructure Fund of the city. The Regional Office of the Department of Budget and Management approved the appropriation. Consequently, on November 21, 1986 disbursement voucher No. 211-8611 in the amount of P210,630.00 was prepared covering the back salaries of Engineer Miranda from June 1, 1978 to May 21, 1986. However, instead of giving due course to the claim of Engineer Miranda the City Auditor of Pagadian City forwarded the matter to the Commission on Audit Regional Director for a ruling.

On January 20, 1987, the COA Regional Office disallowed the claims of Engineer Miranda on the ground that the order lifting the suspension did not specify that he is entitled to payment of back salaries. Carpenter Arpa II, Officer-in-Charge, Commission on Audit, Region IX, Zamboanga City also opined that payment of back salaries to a government officer or employee is allowed only if he is exonerated of the charge against him and his

suspension or dismissal is declared illegal.

Engineer Miranda elevated the matter to the public respondent COA, but the latter sustained in its decision dated June 20, 1988, the disallowance in audit of the former's claim for payment of his salary as City Engineer during the period of his suspension from June 1, 1978 to May 21, 1986. Hence, this petition.

The sole issue for resolution is whether or not the public respondent gravely abused its discretion when it disallowed in audit Engineer Miranda's claim for payment of his salary as City Engineer during the period of his suspension from June 1, 1978 to May 21, 1986.

Petitioner Miranda contends that he is entitled to back salaries because under Section 35 of the Manual of Administrative Investigation, if an Officer or Employee is exonerated of the administrative case he is restored to his position with full payment of his salaries during the period of suspension. He likewise argues that upon the reinstatement an illegally suspended employee is entitled to backwages.

On the other hand, public respondent COA, thru the Solicitor General, opines that petitioner Miranda cannot invoke Section 35 of the Manual of Administrative Investigation because he was not exonerated of the charges against him as the case was dropped and considered closed without any findings of his guilt or innocence. The Solicitor General also argues that during the period of suspension no salary shall be paid unless so provided in the order of suspension and pointed out that payment of the salary withheld may be made at the discretion of the suspending officer if the suspended employee is subsequently reinstated.

The petition is meritorious.

Section 35 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, provides:

"SEC. 35. Lifting of Preventive Suspension, Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

Likewise, Section 42 of Presidential Decree No. 807 dated October 6, 1975, declares:

"SEC. 42. Lifting of Preventive Suspension Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided."

In the earlier case of *Garcia v. Executive Secretary* (6 SCRA 1 [1962]), this Court had occasion to rule that the preventive suspension of Paulino Garcia, the Chairman of the National Science Development Board, whose preventive suspension lasted for nearly seven months is illegal and void.

In applying the provisions of Section 35 of the Civil Service Act of 1959 to a Presidential Appointee this Court declared:

"To adopt the theory of respondents that an officer appointed by the President, facing administrative charges can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution (No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law (Art. XII, Section 4, Constitution of the Philippines) and the

Civil Service Law (No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and after due process). This ????? is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jurisdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers. Of course, this is not so in the case of those officers holding office at the pleasure of the President.” (at p. 8)

Reiterating the Garcia doctrine, this Court in *Layno, Sr. v. Sandiganbayan* (136 SCRA 536 [1985]) ruled that a preventive suspension may be justified but its continuance for an unreasonable length of time is sheer oppression and a denial of procedural due process.

Even more recently in *Deloso v. Sandiganbayan* (173 SCRA 409 [1989]) and *Doromal v. Sandiganbayan* (177 SCRA 354 [1989]), this Court once again applied the Garcia doctrine and ruled that indefinite suspension of a public official, whether elected or appointed, cannot be sanctioned. The reasonable period of suspension as provided under Section 42 of Presidential Decree No. 807 should not exceed the ninety (90) day period.

It is not disputed in the case at bar that Engineer Miranda was under preventive suspension from June 2, 1978 until it was lifted on May 7, 1986. His suspension for almost eight (8) years is unreasonable and unjustified as Section 42 of Presidential Decree No. 807, the applicable law, mandates that preventive suspension should not be longer than ninety (90) days. The dropping of the administrative case against Engineer Miranda on October 7, 1986, for lack of evidence, is even an eloquent manifestation that the suspension is unjustified. This being so, Engineer Miranda is entitled to backwages during the period of his suspension as it is already settled in this jurisdiction that a government official or employee is entitled to backwages not only if he is exonerated in the administrative case but also when the suspension is unjustified (*Abellera v. City of Baguio*, 19 SCRA 600 [1967]); citing *Reyes v. Hernandez*, 71 Phil. 297; *Villamor v. Lacson*, G.R. No. L-15945, November 28, 1964). As regards the computation of backwages we apply the formula adopted in a long line of cases involving illegally dismissed civil servants who were subsequently reinstated. Justice and equity dictate that Engineer Miranda should be paid backwages equivalent to five (5) years pay at the rate last received by him before his suspension on June 2, 1978, without qualification and deduction (*Gabriel v. Domingo et. al.*, G.R. No. 87420, September 17, 1990, citing *Rubio v. PHHC*, G.R. No. L-31469, May 22, 1990; *Gementiza v. CA*, 113 SCRA 477 [1982]; *Balquiedra v. CFI of Capiz*, 80 SCRA 123 [1977]; *Cristobal v. Melchor*, 78 SCRA 175 [1977]).

WHEREFORE, the decision No. 532 dated June 20, 1988 of the respondent Commission on Audit is hereby SET ASIDE. Petitioner Miranda should be paid backwages equivalent to five (5) years at the rate last received by him before his suspension on June 2, 1978, without qualification and deduction. No pronouncement as to costs.

**SO ORDERED.**

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

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\* Issued by Chairman Eufemio Domingo and concurred in by Commissioner Alberto Cruz.

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