

**MAXIMO GABRIEL, PETITIONER, VS. HON. EUFEMIO C. DOMINGO,
HON. BARTOLOME C. FERNANDEZ, JR., AND HON. ALBERTO P. CRUZ,
IN THEIR CAPACITY AS CHAIRMAN AND COMMISSIONERS,
RESPECTIVELY...**

G.R. No. 87420. September 17, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The sole issue in this petition is whether or not an illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his illegal dismissal up to the time of his reinstatement.

On July 3, 1961, petitioner Maximo Gabriel joined the government service as an employee of the then Motor Vehicles Office (now the Land Transportation Office). He started as a janitor and gradually moved up to higher positions. On August 2, 1976 he was extended a permanent appointment as Motor Vehicle Registrar I and on November, 7, 1979 he was designated as Officer-in-Charge of the Marikina Agency.

Meanwhile, by virtue of Executive Order No. 546[1] dated July 23, 1979, a reorganization took place at the Land Transportation Commission which was renamed Bureau of Land Transportation.[2] As a consequence of the said reorganization, the plantilla positions were also renamed and the position of Motor Vehicle Registrar I, which was at that time being held by petitioner, was changed to Transportation District Supervisor.

On January 2, 1981, petitioner received a Memorandum from the Acting Regional Director, BLT-NCR, informing him that he will be appointed as Transportation District Supervisor III effective December 31, 1980.[3] However, this did not materialize. Others were appointed in his stead. Believing that he was more qualified, petitioner filed a protest against the appointees to the position in question with the Civil Service Commission (CSC). Said protest was docketed as CSC Case No. 28.

On February 11, 1981, while being interviewed by the Selection Board for possible appointment to either Mechanical Engineer or Transportation Regulation Officer I, petitioner informed the Board of his protest which was pending with the CSC. The following day or on February 13, 1981, petitioner was served a casual appointment. Three days later, he received Regional Office Instruction No. 2 which directed him to relinquish his duties and accountabilities to the newly appointed Transportation District Supervisor III for the BLT Marikina Agency, in effect terminating his services.[4]

Consequently, petitioner, on March 2, 1981, filed a complaint with the Tanodbayan this time against Bureau of Land Transportation Director Mariano R. Santiago. The same was referred to the Merit Systems Board of the CSC and was docketed as MSB Case No. 961, for illegal termination of services.

On March 10, 1983, the CSC, in CSC Case No. 28, issued a resolution finding petitioner the more qualified candidate for the position of Transportation District Supervisor III compared to Rosario Junsay, one of the

appointees thereto. The CSC ordered that petitioner be appointed to the position in question in Rosario Junsay's stead.[5] Both Director Santiago and Junsay filed separate motions for reconsideration of said resolution and both were dismissed for lack of merit.

Meanwhile, the Merit Systems Board, in MSB Case No. 961, handed down a decision finding the complaint of petitioner to be meritorious and holding that the issuance to him of a casual appointment, which resulted in the termination of his services, was illegal.[6] It also directed that petitioner be appointed to the position of Transportation District Supervisor III effective on the date he was illegally separated from the service.

The above decisions notwithstanding, it was only on April 22, 1988 when petitioner was reinstated but to the lower position of Mechanical Engineer.

Petitioner then filed a claim for backwages which was referred to the respondent Commission on Audit (COA).

It was on January 10, 1989 when the respondent COA issued its decision which denied the claim of petitioner for back salaries and other benefits for the period of his illegal dismissal.

In its decision denying the claim of petitioner for lack of any factual or legal basis, respondent COA stressed that petitioner was not issued a valid appointment as of the time of his termination.[7] It also pointed out that petitioner never assumed office or rendered services during the period covered by his claim and must therefore not be given remuneration following the rule of "no work, no pay." Lastly, it noted that despite the order of the Merit Systems Board for the Bureau of Land Transportation to appoint him to the position of Transportation District Supervisor III as early as February 7, 1984, it was only on April 22, 1988 that he was reinstated and to a different position --- that of a Mechanical Engineer, which according to respondent COA, is a post petitioner earlier refused.

Hence, this petition.

Under the Constitution, it is provided that the security of tenure of civil servants shall be afforded protection.[8] By this constitutional mandate, government employees are protected against unjustified dismissals.

Petitioner who started working for the government way back in 1961 was already a holder of a permanent position at the time the reorganization caused by Executive Order No. 546 took effect. This is evident from his service record.[9]

As observed by the Merit Systems Board, the casual appointment extended to petitioner later on, which led to his sudden and unexpected termination from the service, was made as a consequence of the protest he filed against the appointment of the eleven appointees to the position of Transportation District Supervisor III, and as such, it is illegal. This being the case, petitioner remained a permanent employee in spite of the casual appointment belatedly extended to him following the rule that a permanent employee remains a permanent employee unless he is validly terminated. The principle of non-dismissal except for cause applies to him.

The CSC, acting on the protest of petitioner, in its decision in CSC Case No. 28, ruled that petitioner was more qualified for the position in question, to wit:

"A comparative analysis of the qualifications of the parties would show(s) that Gabriel outranks Junsay and Vito in terms of relevant education. His being a professional engineer indicates his potentials to assume the duties of the position. x x x."

"Foregoing premises considered. x x x It is hereby directed that Maximo Gabriel be appointed as Transportation District Supervisor III in Rosario Junsay's stead who is not in possession of the required qualifications." [10]

The Merit Systems Board, likewise found petitioner's complaint meritorious when it stated categorically that petitioner, who is better qualified than some of those who were extended an appointment should have been preferred or given priority for placement in the Bureau of Land Transportation. Most importantly, the Merit Systems Board ordered that he be "appointed Transportation District Supervisor III EFFECTIVE ON THE DATE HE WAS ILLEGALLY SEPARATED FROM THE SERVICE."

However, the Court reiterates the rule that neither the CSC nor the Merit System Board can direct the appointment of petitioner. It may sustain the protest of petitioner, as in this case, and hold that he is entitled to reinstatement, having been illegally dismissed. It then becomes the duty of the appointing authority to reinstate petitioner by extending the appropriate appointment to him.

The respondent COA does not dispute the fact that the termination of petitioner from the government service is unjustified and illegal.[11] It does not question petitioner's right to be reinstated.

From the foregoing, the court finds the pronouncement of the COA that the claim of petitioner is wanting in basis, whether factual or legal, as erroneous. Indeed, to deny petitioner's back salaries for the period of his illegal dismissal would put to naught the constitutional guarantee of security of tenure for those in the civil service.

In *Cristobal vs. Melchor*,[12] We held that an employee who is reinstated after having been illegally dismissed is considered as not having left his office and should be given a comparable compensation at the time of his reinstatement. We adhered to principle time and again and We see no cogent reason why this rule should not be applied in this case.

Petitioner cannot be faulted for his inability to work or to render any service from the time he was illegally dismissed up to the time of his reinstatement. This was not of his own making or of his liking. In fact, he and his family suffered tremendously as a consequence of his removal and while he was jobless. That he was only reinstated in 1988 although the decision of the Merit Systems Board was issued way back in 1984 must not also be taken against him as this was a matter beyond his control. Even if he wanted to, he could not go back to work since he was not extended any appointment. As the records reflect, it was only on April 22, 1988 that he was reinstated.

Public respondent COA took note of petitioner's acceptance of the position of Mechanical Engineer, which is a position lower than that of Transportation District Supervisor III, upon his actual reinstatement in 1988. The sad plight of petitioner should be treated with compassion and understanding. He was constrained to accept a different position other than what he was entitled to obviously because of financial need caused by the long wait for his reinstatement. The observation that he earlier refused the said position of Mechanical Engineer is not quite accurate. The records show that in truth and in fact, petitioner manifested his interest in the said position but without prejudice to the outcome of his protest.[13]

It may now be asked whether it is the government which must pay petitioner his back salaries or should it be those officials who were responsible for his termination from the service?

From the records of this case, it can be gleaned that petitioner was terminated as a consequence of the reorganization of the then Bureau of Land Transportation. There is no evidence of bad faith on the part of the officials who caused petitioner's unlawful separation and there is nothing on record which shows any ill motive of said officials in effecting petitioner's dismissal.

Thus, petitioner must be paid his backwages by the Land Transportation Office just like all the others who suffered the same fate as him and who were later ordered reinstated.

Chiefs and heads of all government agencies are advised to be more circumspect in the dismissals of employees in order that cases like this will not be repeated and to avoid further diminution of the coffers of the Philippine treasury. If the illegal dismissal is found to have been made in bad faith or due to personal malice of the superior officers, then they will be held personally accountable for the employee's backwages. Otherwise, the government suffers by such arbitrary dismissal.

As for the computation of back salaries wherein petitioner claims for backwages from the date of his illegal dismissal on February 16, 1981 up to the date of his reinstatement on April 22, 1988, We apply the formula provided in a long line of cases for civil servants illegally dismissed which we consider fair enough for all the parties concerned. We hereby grant back salaries to petitioner equivalent to five (5) years pay at the rate last received by him before his unlawful termination, without qualification and deduction.[14]

WHEREFORE, premises considered, decision No. 722 of the respondent Commission on Audit dated January 10, 1989 is hereby annulled and set aside. It is hereby ordered that petitioner be paid back salaries based at the rate prescribed for the position he held as a civil servant before his illegal dismissal, corresponding to but not exceeding five (5) years, without qualification and deduction. No pronouncement as to costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Fernan, C.J., and Paras, J., on leave.

[1] Entitled "CREATING A MINISTRY OF PUBLIC WORKS AND A MINISTRY OF TRANSPORTATION AND COMMUNICATIONS."

[2] Sec. 10, Executive Order No. 546.

[3] Page 18, Rollo.

[4] Page 27, Rollo.

[5] Page 23, Rollo.

[6] Page 29, Rollo.

[7] Page 5, Rollo.

[8] Section 2(3), Article IX (B) provides that "No officer or employee of the civil service shall be removed or suspended except for cause provided by law."

[9] Page 20, Rollo.

[10] Page 23, Rollo.

[11] Page 5, Rollo.

[12] 101 SCRA 857 (1980).

[13] Page 29, Rollo.

[14] Rubio vs. PHHC, G.R. No. L-31469, May 22, 1990; Gementiza vs. CA, 113 SCRA 477(1982); Balquidra vs. CFI of Capiz, 80 SCRA 123 (1977), citing Cristobal vs. Melchor, 78 SCRA 175(1977).

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