

JOEL ALLIAN, PETITIONER, VS. THE CHAIRMAN & COMMISSIONERS, CIVIL SERVICE COMMISSION, RESPONDENTS.

G.R. No. 92016. July 30, 1990

Ponente: GRINO-AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-92016/>

GRINO-AQUINO, J.:

The petitioner, Joel Allian, seeks a review of Resolution No. 90-009 dated January 5, 1990, of the Civil Service Commission denying his claim for back salaries and other benefits due him for the period of his illegal dismissal on February 2., 1988 up to October 30, 1989, when he was reinstated by the Commission to his position as Personnel Specialist II.

On February 12, 1988, Allian received a written notification from CSC Chairman Celerina Gotladera informing him that in the reorganization of the Commission pursuant to Section 3 of Executive Order No. 181 dated June 1, 1987, he was separated from the service effective February 1, 1988. He learned later that he was dismissed for having incurred unauthorized leaves of absence which, according to him, had in fact been authorized or approved by his superiors. He filed a petition for reconsideration with the Reorganization Appeals Board (RAB).

On August 4, 1988, the RAB-promulgated Resolution No. 88-29 finding that his separation from the service was "not in order," hence, "he should be reappointed to his former position as Personnel Specialist, without prejudice to the filing of appropriate administrative disciplinary action against him as the evidence may warrant" (Annex F).

This resolution became final and executory after fifteen (15) days.

On September 2, 1988, Allian requested that he be reappointed to his former position (Annex G), but the Commission replied on September 12, 1988 that he would have to undergo "further screening and evaluation" (Annex H). He protested that he was "neither a next-in-rank nor an applicant" for the position hence, he need not be screened and evaluated. He reiterated his request that he be reappointed. He further prayed that the Commission grant him other reliefs and benefits due him under the law (Annex I).

On August 25, 1989, he wrote a follow-up letter requesting that the Commission order his "immediate reappointment x x x with payment of back salaries and other benefits and the recognition of seniority and other rights of a permanent career service employee" (Annex J).

On October 24, 1989, the Commission relented and issued Resolution No. 89-813 appointing him to his former position as Personnel Specialist II (Annex K).

As the resolution did not grant him back salaries, he again wrote the Commission on November "3. 1989 reminding it that under Section 20 of the Rules on Government Reorganization promulgated by the Commission to implement Republic Act No. 6656, officers and employees found to have been separated from the service in violation of RA No. 6656 "shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation corresponding to the position to which they should have been appointed based "on the evaluation and assessment as provided for in these Rules." Since he incurred

debts to be able to support his family during the period of his illegal termination from the service, he asked for his back salaries so he could pay his debts (Annex L).

On January 5, 1990, the Commission issued Resolution No. 90-009 denying his claim for back salaries (Annex M).

Allian promptly filed a petition for certiorari and mandamus in this Court. Upon being ordered to comment on the petition, the Solicitor General manifested that after a thorough review of the records of the case, he was "unable to sustain the position taken by the public respondents." He asked that the latter be given time "to file their own Comment" (p. 52, Rollo) which they did on May 31, 1990 (p. 56, Rollo).

The lone issue raised in the petition is whether Allian is entitled to full pay for the period of his illegal separation.

Section 9 of RA 6656 provides:

"Section 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation x x x." (Emphasis supplied.)

In their comment on the petition, the public respondents justified their action on the grounds that (1) Allian was guilty of incurring unauthorized leaves of absence; (2) that his reappointment was merely an act of generosity and compassion by the Commission; (3) that he was "reemployed," not "reinstated," after being separated from the service through a valid reorganization of the Commission; (4) that he did not render service during his period of unemployment; and (5) that "there is no declaration that he was illegally terminated from the service" (p. 63, Rollo).

After deliberating on the petition and the respondents comment which we have treated as their answer, the Court resolved to grant the petition.

The Commission's finding that Allian had violated reasonable rules and regulations by going AWOL (absence without leave) is invalid because Allian was not formally charged with that offense nor given a chance to defend himself. On the contrary, the RAB found that "records are bereft of any proof of his having any derogatory record which could be attributed to his termination" (p. 6, Rollo). The RAB pointed out that even if an employee had been absent without approved vacation leave of absence for a period of one (1) month, he may not be dismissed outright because Memorandum Circular No. 2, s. 1985 of the Commission, particularly Item No. 4 of the 5th paragraph thereof, requires that -

4. The agency should notify in writing the employee, who is absent (on vacation) without leave (AWOL) for thirty (30) days, to report within five (5) days from receipt of notice, otherwise he shall be dropped from the rolls.

Since no records show that Allian was notified to report for work as required by the above-cited circular, nor is there any showing that he failed to file an application for any leave of absence he made during the period in question" (p. 7, Rollo), he may not be dropped from the rolls. To find him guilty of absence without leave without first hearing his side and giving him a chance to present evidence in his defense, would be tantamount to convicting him of a violation of law without due process.

The RAB found that Allian's dismissal was "not in order," in effect, unlawful. Consequently, he was entitled to reinstatement as a matter of right, not out of charity or compassion.

He may not be faulted for failing to render service during the period of his illegal dismissal. The Commission illegally deprived him of his work. Since his dismissal was effected in violation of the law, he is entitled to the

payment of his back salaries as provided in Section 9 of RA 6656. So did the Commission and this Court hold in the case of the ^customs employees who were improperly reorganized out of the service (Dario vs. Mison, et al., G.R. No. 81954 decided together with G.R. Nos. 81967, 82023, 83737, 85310, 85335 and 86241 on August 8, 1989).

WHEREFORE; the petition for certiorari is granted. The public respondents are ordered to pay the salaries and other benefits legally due the petitioner, Joel Allian, from February 2, 1988 to October 30, 1989, a period of twenty-one (21) months. No costs.

SO ORDERED.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.