

OSCAR M. ORBOS, IN HIS CAPACITY AS SECRETARY, DEPARTMENT OF TRANSPORTATION & COMMUNICATIONS, ROGELIO A. DAYAN AS GENERAL MANAGER, PHILIPPINE PORTS AUTHORITY, AND ONOFRE A. VILL...

G.R. No. 92358. November 21, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

The sole issue which the petitioners pose is, "WHETHER OR NOT DINOPOL AND BUNGUBUNG ARE ENTITLED TO IMMEDIATE REINSTATEMENT AND PAYMENT OF BACK WAGES PENDING ADJUDICATION BY THE HONORABLE COURT OF APPEALS OF THE CASES ON THEIR MERITS," an issue which they pray this Court to resolve in the negative. "The proper question," they say -- given the undisputed proposition that the period of preventive suspension cannot exceed ninety (90) days, "simply hinges on the proper computation of the period of preventive suspension," a question which in turn depends on the proper interpretation of Section 42 of PD 807, specifically, of the instances when "delay of the disposition of the case, ** due to default, negligence or petition of the respondent, ** (may be deducted from) the period of suspension."

The Philippine Ports Authority (PPA) is a government corporation which was created by Presidential Decree No. 857.[1] It is "an attached agency" of the Department of Transportation and Communications (DOTC).[2]

On July 1, 1988, former Secretary of Transportation and Communications Rainerio O. Reyes issued Office Order 88-318 establishing the Administrative Action Board (AAB) composed of a chairman and two members, to act on, decide and make recommendations to the Secretary regarding "all cases of administrative malfeasance, irregularities, grafts and acts of corruption in the Department." Respondent Onofre A. Villaluz[3] was named Chairman of the Board.[4]

1. Proceedings Involving Leopoldo Bungubung

a. First complaint. -- On August 26, 1988, two officers of the PPA Police Force filed a complaint with the AAB against Leopoldo F. Bungubung, the Manila Port District Manager (with rank of Manager VII), for "dishonesty and conduct prejudicial to the best interest of the service." The case was docketed as AAB-031-88. Bungubung filed his answer to the complaint in due course. He also filed a motion to dismiss assailing the jurisdiction of the AAB, arguing that the DOTC "has no direct line supervision and control over it unlike the four (4) bureaus: Bureau of Land Transportation, Bureau of Air Transportation, Bureau of Posts, Bureau of Telecommunications, and the ** regional offices mentioned in Sec. 10, Ex. Order 125, STRUCTURAL ORGANIZATION; ** (hence, the) matter ** of disciplining employees like ** Bungubung is with the PPA, not with DOTC." [5] The motion to dismiss was denied on January 16, 1989.

b. Second complaint. -- A second administrative indictment ("Formal Charge") was presented against Bungubung, this time accusing him and a certain Mario Tan of "dishonesty, inefficiency and incompetence in the performance

of official duties, wilful violation of reasonable office rules and regulations and/or conduct prejudicial to the best interest of the service." This was docketed as Adm. Case 11-01-88 and indorsed to the AAB for appropriate action.

c. Preventive suspension. -- On December 5, 1988, Bungubung was placed under preventive suspension on account of the charges against him.[6]

d. G.R. Nos. 86468-69; temporary restraining order. -- Bungubung then instituted in this Court a special civil action of certiorari seeking invalidation of the proceedings in the two administrative actions against him. The action, entitled "Leopoldo F. Bungubung v. Hon. Rainerio O. Reyes, et al.," was docketed as G.R. Nos. 86468-69. In that action this Court issued on January 26, 1989 a temporary restraining order "enjoining all respondents (i.e., petitioners herein) from further proceeding in Administrative Case No. AAB-031-88 ** and Case No. 11-01-88."

On March 2, 1989, Bungubung wrote to the PPA General Manager to ask for reinstatement to his position as District Manager of the Port of Manila on March 4, 1989, in view of the expiration of the 90-day period of his suspension on March 3, 1989. The General Manager reassigned him to his office on March 6, 1989. That reassignment was however revoked on March 17, 1989 on the ground that the 90-day period could not be deemed to have expired, considering that the delay caused by the restraining order of this Court, *supra*, should be deducted therefrom.[7]

2. Proceedings Involving Cristeto Dinopol

a. Two (2) complaints. -- Also in the month of August, 1988, two (2) administrative complaints were filed against Cristeto E. Dinopol, PPA Port Manager (with rank of Manager VII). The first, for "gross dishonesty," was filed by former Sec. Reyes. The case was docketed as ADM. Case AAB-006-88. The second, for "dishonesty, conduct prejudicial to the best interest of the service," was proffered by PPA General Manager Rogelio A. Dayan against said Dinopol and another employee, Tomas B. Carlos. It was docketed as Administrative Case AAB-016-88.[8]

b. Preventive suspension. -- Two orders of preventive suspension were given out by General Manager Dayan on the asserted authority of Section 41, Article IX of PD 807. The first was issued on August 26, 1988 as regards Adm. Case AAB-006-88; the second, on September 19, 1988 in relation to Adm. Case AAB-016-88.[9]

c. Hearing and judgment. -- Hearings were conducted on the charges against Dinopol and Carlos. While impugning the jurisdiction of the AAB and contending (like Bungubung) that "it is only the PPA General Manager who is vested with jurisdiction to initiate and/or conduct such administrative investigation pursuant to Sec. 8 of PD 857 (PPA Charter)," Dinopol nonetheless actively participated in the proceedings and presented his defense.[10] It appears that decisions were thereafter rendered adversely to Dinopol (and Carlos): on October 27, 1988 as regards Adm. Case AAB-006-88, and on November 23, 1988 with respect to AAB-016-88.[11]

3. RTC Orders to Restore Status Quo Ante and for Suspension of Administrative Proceedings Re Dinopol

On December 6, 1988, Dinopol sought to annul and perpetually stop the administrative proceedings against him by commencing a special civil action of certiorari, prohibition and mandamus in the Regional Trial Court at Pasig, Metro Manila, on the theory that the AAB had no jurisdiction of said proceedings.[12] On December 7, 1988 that Court granted his application for restraining order and commanded the Secretary of Transportation & Communications and the General Manager of the Philippine Port Authority -- herein petitioners -- "to desist from continuing the proceedings of the Administrative Action Board in whatever stage it is presently situated and to observe status quo on the situation of (Dinopol) prior to his suspension, for a period of twenty (20) days from receipt date or unless otherwise directed by Court during said period." [13] This Order was followed by a Resolution of the same Court dated January 9, 1989 reiterating the order for the petitioners to desist from

proceeding in the administrative cases against Dinopol and, additionally, directing said petitioners to reinstate Dinopol to his former position of "Port Manager of Davao" and to pay him back salaries and other emoluments during his preventive suspension. A writ of preliminary injunction issued accordingly.[14]

The petitioners moved for reconsideration, and for dissolution of the writ. Dinopol, for his part, filed a motion to cite PPA Manager Dayan in contempt of court for failure to reinstate him and pay him his back salaries. Both motions were heard on the same day, January 20, 1989. On January 26, 1989, the Trial Court denied the petitioners' motion for reconsideration and directed them "to immediately implement the writ of preliminary injunction" with the warning that if they failed to do so, they would be fined "in the sum of P1,000.00 and imprisoned for a period not exceeding one (1) month." [15]

a. G.R. No. 86646; temporary restraining order. -- The petitioners thereupon filed with this Court a petition for certiorari and prohibition, to annul and vacate the proceedings in the Trial Court, which was docketed as G.R. No. 86646. They also perfected an appeal from the order of contempt. On February 2, 1989, this Court en banc issued a temporary restraining order commanding the Trial Court "to CEASE AND DESIST from implementing the Resolution and Writ of Preliminary Injunction both dated January 9, 1989 as well as the Order dated January 26, 1989.[16]

4. Consolidation, and Referral to Court of Appeals

The petitioners then asked, by motion dated February 27, 1989, for the consolidation of G.R. No. 86646 (involving Dinopol) and G.R. Nos. 86468-69 (involving Bungubung) because said cases "presented the common issue of: WHETHER OR NOT THE SECRETARY OF TRANSPORTATION AND COMMUNICATIONS AND/OR THE AAB HAVE JURISDICTION TO INITIATE AND HEAR ADMINISTRATIVE CASES AGAINST PPA PERSONNEL WHOSE RANK IS BELOW THAT OF AN ASSISTANT GENERAL MANAGER." The motion for consolidation was granted by Resolution dated February 27, 1989.[17]

After being thus consolidated, the cases were referred to the Court of Appeals "for appropriate action," that Court having jurisdiction concurrent with this Court over special civil actions of certiorari, prohibition and mandamus under Rule 65 of the Rules of Court, and this Court not having been cited to any special and important reason to take cognizance of the petitions in question in the first instance. In the Court of Appeals, the consolidated cases were docketed as CA-G.R. No. SP 17195.[18]

4. Interlocutory Orders of Court of Appeals for Reinstatement of Bungubung and Dinopol and Payment to them of Back Salaries

In the Court of Appeals, both Bungubung and Dinopol moved for their immediate reinstatement pending adjudication on the merits of said CA-G.R. No. SP 17195. The Court granted their motions in separate resolutions.[19]

By Resolution dated July 5, 1989,[20] the Court of Appeals ordered the "General Manager of the Philippine Ports Authority ** , pending adjudication of this case on its merits, to reinstate ** Leopoldo Bungubung to his former position in the Philippine Ports Authority in accordance with Section 42 of PD 807 which provides that the same shall take effect immediately." [21] The Court opined inter alia that the "mandate of Section 42 of PD 807 is clear: after 90 days, if the administrative case is not finally decided, the respondent is entitled to automatic reinstatement;" and the "only delay that may be deducted from the computation (of the 90-day period) is that 'due to the fault, negligence or requests of the respondent,' meaning delays caused by unjustified or malicious postponements obtained or caused by the respondent in the course of the administrative proceeding. (Panti v. Alberto, 106 Phil. 181)."

In another Resolution dated July 20, 1989,[22] the same Court also ordered the PPA General Manager, "pending adjudication of this case on its merits, to reinstate ** Cristeto E. Dinopol, Jr. to his former position at Philippine Ports Authority in accordance with Section 40 that the same shall take effect immediately." Motions for reconsideration of both said Orders of July 5 and July 20, 1989, were presented by herein petitioners. They were denied in separate Resolutions both dated January 19, 1990, which also ordered the payment to them of back wages pendente lite.[23]

5. Present Proceedings in this Court

The petitioners -- the Secretary of Transportation & Communications, the PPA General Manager and the AAB Chairman --are now before this Court in another special civil action,[24] instituted on March 14, 1990, this time seeking the annulment and setting aside of the above described resolutions of the Court of Appeals. They contend that the 90-day period of preventive suspension had been interrupted and hence had not been completed as regards Bungubung and Dinopol, and payment of back salaries to them at this time is premature. They also stress that decisions in the administrative cases against Dinopol were rendered on October 27, 1988 (re AAB-006-88) and November 23, 1988 (re AAB-016-88), both imposing the penalty of dismissal from the service, and that both decisions "have attained finality by reason of Dinopol's failure to interpose timely appeals therefrom." [25]

On March 20, 1990, this Court issued an order temporarily commanding the Court of Appeals "to CEASE and DESIST from implementing its Resolutions dated July 5, 1989, July 20, 1989 and January 19, 1990, all issued in CA-G.R. S.P. No. 17195, directing the petitioners to reinstate with backwages, pendente lite, respondents Leopoldo F. Bungubung and Cristeto E. Dinopol." [26]

7. RESOLUTION

As stated in this opinion's opening paragraph, the petitioners raise only one issue, and that is, "WHETHER OR NOT DINOPOL AND BUNGUBUNG ARE ENTITLED TO IMMEDIATE REINSTATEMENT AND PAYMENT OF BACK WAGES PENDING ADJUDICATION BY THE HONORABLE COURT OF APPEALS OF THE CASES ON THEIR MERITS," an issue to which they propose a negative answer.[27] According to them, the question turns on the proper interpretation of Section 42 of PD 807 prescribing the maximum period of preventive suspension, and specifying the instances when "delay of the disposition of the case, ** due to default, negligence or petition of the respondent, ** (may be deducted from) the period of suspension."

Said provision reads as follows:

"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 of 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."

The law evidently considers that a "period of ninety (90) days" is time enough for the investigation and adjudication of an administrative case, counted from "the date of suspension of the respondent who is not a presidential appointee." This will include not only the filing of required or permitted pleadings and the reception of testimonial, documentary and object evidence, but also the consideration and resolution of incidental motions filed in good faith, with no intent to delay the disposition of the case. The investigating officer is expected to exert and maintain control of the case to ensure, within the time thus appointed, the orderly and full ventilation of the parties' positions and the expeditious progress and ultimate adjudication of the proceeding. If the investigating officer fail in this function and is thus unable to decide the case within ninety (90) days, or the difficulty or

complexity of the case, or other fortuitous cause, precludes decision thereof within said period, reinstatement of the suspended respondent becomes mandatory. On the other hand, the law makes clear that when the delay in the disposition of the case results from the suspended respondent's (1) fault, (2) negligence or (3) petition, the period of such delay is not counted in the computation of the 90-day period.

Thus, where the delay is caused by the respondent's absence at scheduled hearings, or requests for postponement, the time of delay is deducted in reckoning the period of suspension. So it was held in *Panti v. Alberto*, 106 Phil. 181.

"It is apparent that the hearing has suffered several interruptions due to the requests for postponement of appellant or to his absence, and that in spite of such delay, the Provincial Board kept on resetting the hearing until it finally acted on the case on October 11, 1957. And on October 21, 1957, the decision was rendered. If we were to deduct from the whole period that transpired from the first day of the hearing set on September 12, 1957 to October 21, 1957, date of the decision, the period consumed by the several interruptions which can only be attributed to appellant, the result would be that only seventeen (17) days had elapsed of the 30-day limit fixed by law (at the time). It would therefore appear that, when these two cases were filed by appellant, his suspension was still within the limit of the law and hence it cannot be pretended that Gov. Alberto has acted arbitrarily on the matter. We find therefore no merit on this claim of appellant."

In *Diaz v. Arca*, 15 SCRA 183, the period of suspension was deemed interrupted not only by postponements obtained by the suspended respondent, but also by a preliminary injunction issued at the latter's instance forbidding action on the administrative case until further orders.

"* * * From March 5, 1962 to May 4, 1962 is 60 days. However, since Coral asked for 15 days' postponement, the 60-day period would have ended on May 19, 1962. Inasmuch as he asked for postponement on May 17, 1962, the 60-day period was again interrupted. That on June 21, 1962, when he filed the case at bar, he asked for the issuance of a writ of preliminary injunction to enjoin further action on the administrative case until the final determination of the instant case, and said petition having been granted, the 60-day period was again suspended until such time as the injunction should have been lifted. This time has not yet come. Consequently, the suspension of Coral has not yet exceeded the 60-day period."

Indeed, the filing by a suspended respondent of a motion to dismiss, the consideration and resolution of which prevented earlier scheduling of the hearing on his administrative case, was ruled in *Equizabal v. Maleniza*, 22 SCRA 24 as delay of his own causing.

"Regarding the delay in setting for hearing on the merits Administrative Case No. 4, the same appears to be partly due to petitioner himself. Respondent alleged, and petitioner does not deny, that on March 18, 1965, he moved for the dismissal of the case. Petitioner's own ex-parte motion here for preliminary injunction against the administrative hearing set on May 28, 1965, confirms the existence of said motion to dismiss, the preliminary disposition of which would again temporarily divert the attention of the provincial board from the merits of the pending case."

In light of these rulings, it is not difficult to conclude that restraining orders or preliminary injunctions inhibiting proceedings in an administrative case, obtained by the suspended respondents from courts of justice (such as those obtained by the private respondents) interrupt the 90-day period of preventive suspension and should be excluded in the reckoning of its permissible duration.

Bungubung's preventive suspension commenced, according to him, on December 5, 1988.[28] On January 26, 1989 a temporary restraining order was issued on his application in G.R. Nos. 86468--69 "enjoining all respondents (i.e., Sec. Reyes, et al.) from further proceeding in Administrative Case No. AAB-0310-88 ** and Case No. 11-01-88." The restraining order continues in effect until this day; hence, from January 26, 1989, the

administrative cases against Bungubung have not moved, have remained frozen. The period of the effectivity of the restraining order cannot be taken into account in computing the length of Bungubung's preventive suspension thus far. It thus results that for purposes of determining whether or not the 90-day maximum fixed for the allowable duration of preventive suspension has been reached, the time of the effectivity of the restraining order should be excluded, i.e., from January 26, 1989 to date. In other words, Bungubung must be deemed to have been under preventive suspension only from December 5, 1988 until January 26, 1989, a period of fifty-two (52) days. There are therefore thirty-eight (38) more days still remaining of his preventive suspension.

Dinopol, on the other hand, was placed under preventive suspension in two (2) separate administrative cases and on different dates: first, on August 26, 1988 as regards Adm. Case AAB-006-88; and second, on September 19, 1988 in relation to Adm. Case AAB-016-88. On December 7, 1988, he succeeded in getting a temporary restraining order from the Regional Trial Court enjoining herein petitioners (Secretary Reyes, et al.) "to desist from continuing the proceedings of the Administrative Action Board in whatever stage it is presently situated and to observe status quo on the situation of (Dinopol) prior to his suspension, for a period of twenty (20) days from receipt date or unless otherwise directed by Court during said period." [29] Although the order ceased to have any force and effect after twenty (20) days, or after December 27, 1988, it was nevertheless shortly replaced by an order of injunction on January 9, 1988 which reiterated the order for the petitioners to desist from proceeding with the administrative cases against Dinopol and, additionally, directed them to reinstate Dinopol to his former position of "Port Manager of Davao" and to pay him back salaries and other emoluments during his preventive suspension. [30] Now, the effective period of the restraining order and preliminary injunction -- preventing any movement in the administrative cases against Dinopol -- i.e., from December 7, 1988 to the present, cannot be included in the computation of the length of Dinopol's preventive suspension. In other words, for all intents and purposes, Dinopol was under preventive suspension -

- 1) in Case AAB 006-88, from August 26, 1988 to December 7, 1988, or for a total period of 103 days; and
- 2) in Case AAB 016-88, from September 19, 1988 to December 7, 1988, or 79 days.

It thus results that while the period of preventive suspension in Case AAB 006-88 has run out, more than ninety (90) days thereof having elapsed, there are still eleven (11) days remaining of the term of preventive suspension in Case AAB 016-88.

Upon the lapse of the balance of the period of their preventive suspension, Bungubung and Dinopol shall of course have the right to reinstatement, for this is mandate of the law. They are not, however, entitled to the payment of back salaries during the period of their preventive suspension not exceeding ninety days (not counting any delay chargeable to them, as already pointed out), except if they are ultimately exonerated of the accusations against them.

It would appear, however, that because of this Court's Order of March 20, 1990, commanding the respondent Court of Appeals "to CEASE and DESIST from implementing its Resolutions dated July 5, 1989, July 20, 1989 and January 19, 1990, all issued in CA-G.R. S.P. No. 17195, directing the petitioners to reinstate with backwages, pendente lite, respondents Leopoldo F. Bungubung and Cristeto E. Dinopol," supra, [31] the entire ninety-day period of the private respondents' preventive suspension might already have run out. In such an event, of course, their reinstatement pending final adjudication of their administrative cases is required.

WHEREFORE, subject to the condition set forth in the preceding paragraph, the petitions are GRANTED, and the Resolutions of the respondent Court in CA-G.R. No. SP 17195 dated July 5, 1989 and July 20, 1989 are ANNULLED AND SET ASIDE, without pronouncement as to costs.

SO ORDERED.

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

Padilla, J., no part. Related to Ex-Secretary Reyes who originally issued the questioned orders.

Feliciano, J., on leave.

* "In lieu," according to the Solicitor General, "of former Secretary Rainerio O. Reyes in whose name the cases herein involved were originally prosecuted and/or defended."

[1] Rollo, p. 3

[2] Id., pp. 52, 65-66. According to respondent Dinopol, citing Sec. 38 (3), Chap. 7 of the Administrative Code of 1987, the term, attachment, "refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination" (emphasis his) (Rollo, pp. 64-65).

[3] Former Associate Justice of the Intermediate Appellate Court

[4] Rollo, pp. 6, 65-66

[5] Id., pp. 6, 52

[6] Id., p. 53

[7] Id., pp. 53-54

[8] Id., pp. 8, 66

[9] Id., pp. 8, 66-67

[10] Id., p. 8

[11] Id., p. 9. The Solicitor General states that "Dinopol denies actual receipt of the mentioned decisions," but brands the denial as a "flimsy claim" (Rollo, p. 29).

[12] Id., pp. 9, 67. The case was docketed as Civil Case No. 56750 and assigned to Branch 153, presided over by Judge Armie E. Elma.

[13] Rollo, pp. 9-10

[14] Id., p. 10

[15] Id., pp. 10-11

[16] Id., pp. 11-12, 68

[17] Id., pp. 12, 68

[18] Id., p. 12

[19] Id., p. 13

[20] Id., pp. 34-39

[21] The Resolution was written for the Thirteenth Division by Dayrit, J., with whom concurred de Pano, Jr. and

Magsino, JJ.

[22] Rollo, pp. 40-42

[23] Id., p. 13

[24] As already narrated, the first was that filed against them by Bungubung, docketed as G.R. Nos. 86468-69, and the second, that filed also against them by Dinopol, docketed as G.R. No. 86646.

[25] Rollo, p. 29

[26] Id., p. 47

[27] Id., pp. 14, 16

[28] Id., p. 53; SEE footnote 6

[29] Rollo, pp. 9-10; see footnote 13, supra

[30] Id., p. 10; see footnote 14, supra

[31] Footnote 26

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