

MANILA PUBLIC SCHOOL TEACHERS ASSOCIATION, FIDEL FABABIER, MERLIN ANONUEVO, MINDA GALANG AND OTHER TEACHER-MEMBERS SO NUMEROUS SIMILARLY SITUATED, PETITIONERS-APPELLANTS, VS. TH...

G.R. No. 95445. August 06, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The series of events that touched off these cases started with the so-called "mass action" undertaken by some 800 public school teachers, among them members of the petitioning associations in both cases, on September 17, 1990 to "dramatize and highlight"[1] the teachers' plight resulting from the alleged failure of the public authorities to act upon grievances that had time and again been brought to the latter's attention.

The petition in G.R. No. 95590 alleges in great detail the character and origins of those grievances as perceived by the petitioners, and the attempts to negotiate their correction;[2] these are more briefly, but quite adequately and with no sacrifice of relevant content, set forth in the petition in G.R. No. 95445, portions of which are quoted hereunder without necessarily affirming their objective truth or correctness:

"3. Together with other teachers embracing the Teachers and Employees Consultative Council (TECC) and the Alliance of Concerned Teachers, the petitioners, in accordance with their Constitution and By-Laws, resolved to engage in mass concerted actions, after peaceful dialogues with the heads of the Department of the Budget and Management, Senate and House of Representatives in public hearings as well as after exhausting all administrative remedies, to press for, among other things, the immediate payment of due chalk, clothing allowances, 13th month pay for 1989 arising from the implementation of the Salary of Standardization Law, the recall of DECS Order 39 s. 1990 directing the oversizing of classes and overloading of teachers pursuant to the cost-cutting measures of the government, the hiring of 47,000 new teachers to ease the overload of existing teachers, the return of the additional 1% real property taxes collected by local government units to education purposes to be administered by the Local School Boards, and consequent recall of DBM Circulars Nos. 90-4 and 9011 and local budget circular No. 47 consistent with RA 5447 and the new Constitution mandating that education shall enjoy the highest budgetary priority in the national budget, and other equally important demands; The dialogues and conferences initiated by the petitioners and other teacher organizations were as early as March 14, 1989, March 14, 1990, April 23, 1990, May 28, 1990, June 5, 1990, September 3, 1990 and September 14, 1990 with the Civil Service Commission, the Senate and House of Representatives, Department of Budget and Management and the Department of Education, Culture and Sports, but all these did not result in the granting of the demands of the petitioners, leaving them with no other recourse but to take direct mass action such as the one they engage in three weeks ago.

4. On September 14, 1990, the petitioners and other teachers in other cities and municipalities in Metro Manila, staged a protest rally at the DECS premises without disrupting classes as a last call for the government to negotiate the granting of demands. No response was made by the respondent Secretary of Education, despite the demonstration so the petitioners began the ongoing protest mass actions on September 17, 1990. ****"[3]

September 17, 1990 fell on a Monday, which was also a regular school day. There is no question that the some 800 teachers who joined the mass action did not conduct their classes on that day; instead, as alleged in the petition in G.R. No. 95590,[4] they converged at the Liwasang Bonifacio in the morning whence they proceeded to the National Office of the Department of Education, Culture and Sports (DECS) for a whole-day assembly. At about 1:00 o'clock p.m., three representatives of the group were allowed to see the respondent Secretary of Education who "**** brushed aside their grievances," warned them that they would lose their jobs for going on illegal and unauthorized mass leave. Upon leaving said respondent's presence, they were handed an order directing all participants in the mass action to return to work in 24 hours or face dismissal, and a memorandum directing the DECS officials concerned to initiate dismissal proceedings against those who did not comply and to hire their replacements.[5] Those directives notwithstanding, the mass actions continued into the week, with more teachers joining in the days that followed. In its issue of September 19, 1990, the newspaper Manila Standard reported that the day previous, the respondent Secretary of Education had relieved 292 teachers who did not return to their classes. The next day, however, another daily, Newsday, reported that the Secretary had revoked his dismissal order and instead placed 56 of the 292 teachers under preventive suspension, despite which the protesters' numbers had swelled to 4,000.[6]

On the record, what did happen was that, based on reports submitted by the principals of the various public schools in Metro-Manila, the respondent Secretary of Education had filed *motu proprio* administrative complaints against the teachers who had taken part in the mass actions and defied the return-to-work order on assorted charges like grave misconduct, gross neglect of duty, gross violation of the Civil Service Law, absence without official leave, etc., and placed them under 90-day preventive suspension. The respondents were served copies of the charge sheets and given five (5) days to submit answer or explanation. Later, on October 8, 1990, the respondent Secretary constituted an investigating committee of four (4) to determine and take the appropriate course of action on the formal charges and designated the special prosecutors on detail with the DECS to handle their prosecution during the formal hearings.[7]

On October 11, 1990, the respondent Secretary of Education rendered the first of his now-questioned decisions on the administrative complaints. In Case No. DECS 90-002, he found twenty (20) respondent teachers guilty of the charges preferred against them and dismissed them from office, effective immediately.[8] In the other investigations that followed and as of December 3, 1990, 658 teachers were dismissed, 40 were suspended for one (1) year, 33 for nine (9) months, and 122 for six (6) months; 398 were exonerated.[9]

Earlier, on September 19, 1990, the petitioners in G.R. No. 95445 had filed with the Regional Trial Court of Manila, Branch 18, a petition[10] for prohibition, declaratory relief and preliminary mandatory injunction to restrain the implementation of the return-to-work order of September 17, 1990 and the suspension or dismissal of any teacher pursuant thereto and to declare said order null and void. Issuance *ex parte* of a temporary restraining order was sought, but seeing no compelling reason therefor, the Regional Trial Court instead set the application for preliminary injunction for hearing, and heard the same, on September 24, 1990. Thereafter and following the submission of memorandums by the parties, said Court rendered judgment declaring the assailed return-to-work order valid and binding, and dismissing the petition for lack of merit.[11]

Review of said judgment is sought in G.R. No. 95445.

G.R. No. 95590 is a parallel original proceeding for prohibition, *mandamus* and *certiorari* grounded on the same state of facts and instituted for substantially the same purpose, i.e., the invalidation of the return-to-work order of the respondent Secretary of Education and all orders of suspension and/or dismissal thereafter issued by said respondent against the teachers who had taken part in the mass actions of September 17, 1990 and the days that followed.

Both cases were ordered consolidated by Resolution issued on October 25, 1990,[12] and separate comments were filed by the Solicitor General on behalf of the public respondents, in G.R. No. 95445 on October 31, 1990, and in G.R. No. 95590 on December 5, 1990.[13] On November 20, 1990 the parties were heard in oral argument on the petitioners' united pleas for a temporary restraining order/mandatory injunction to restore the status quo ante and enjoin the public respondents from continuing with the issuance of suspension orders and proceeding with the administrative cases against the teachers involved in the mass actions.

Said pleas were denied by the Court in its Resolution of December 18, 1990,[14] and a motion for reconsideration filed by the petitioners in G.R. No. 95590 was likewise denied.

In two separate but identically-worded motions filed on their behalf by Atty. Froilan M. Bacungan,[15] the following persons, to wit: Florita D. Guazon, Elisea G. Lazo, Gonzala G. Sioson, Esperanza Valero, Nenita Pangilinan, Ramon David, Aurora Bosi, Encarnita David, Socorro Sentin, Crispulo Santos, Rodriguez Bagana, Rodolfo D. Bacsal, Ruben Bersamina, Rodolfo Arroyo, Irene Gadil, Rebecca Roldan, Rosita Samson, Priscilla Avendia, Arturo Cabuhat, Rosalinda Caoili, Angelina Corpuz, Purisima Leria, Elsie Somera, Dedaica Jusay, Teresita partoza, Gloria Salvador, Catherine San Agustin, Nestor Aguirre, Lorenza Real, Celia Ronquillo, Vicente Carranza, Jessie Villanueva, Yolanda Alura, Clara Alvarez, Danilo Llamas, Ladera Panita, Myrna Sena, Zenaida Ligon, Daisy S. Conti, Danilo Caballes, Susan Maragat, Roberto Manlangit and Elizabeth T. Aguirre, seek leave to withdraw as parties in G.R. No. 95590. These movants claim that they are such parties although not individually so named in the petition in said case, being among those referred to in its title as "other similarly situated public school teachers too numerous to be impleaded," who had been administratively charged, then preventively suspended and/or dismissed in the wake of the mass actions of September 1990. They assert that since this Court is not trier of facts, they have opted to appeal the questioned decisions or actuations of the respondent Secretary of Education to the Civil Service Commission where they believe they will have " * * all the opportunity to introduce evidence on how (Secretary) Carino violated their constitutional rights to due process of law * * security of tenure and * * peaceably to assemble and petition the government for redress of grievances * * ."

An opposition to the first motion was filed[16] which, briefly, contended that, as this Court had already found that the petitioners had gone on an unlawful strike and that public respondent Carino's acts were prima facie lawful, the motion was either an attempt at forum-shopping or meant to avoid the "inevitable outcome" of issues already pending final determination by the Court.

The Court's Resolution of December 18, 1990, supra, denying the petitioners' plea for restoration of the status quo ante and to restrain/enjoin further suspensions of, and the initiation or continuation of, administrative proceedings against the teachers involved, is based on the following postulates:

- (1) the undenied -- indeed, the pleaded and admitted -- fact that about 800 teachers, among them the individual petitioners and other unnamed but "similarly situated" members of the petitioning associations in both cases, unauthorizedly absented themselves from their classes on a regular schoolday, September 17, 1990, in order to participate in a "mass action" to dramatize their grievances concerning, in the main, the alleged failure of the public authorities, either to implement at all or to implement in a just and correct manner, certain laws and measures intended to benefit them materially;
- (2) the fact, too, that in the days that followed, more mass actions for the same purpose were undertaken, notwithstanding a return-to-work order issued by the respondent Secretary of Education; more teachers joined the so-called "peaceful assemblies" on September 18, 1990 and the number rising to 4,000 on September 19, 1990;[17]
- (3) that from the pleaded and admitted facts, these "mass actions" were to all intents and purposes a strike; they

constituted a concerted and unauthorized stoppage of, or absence from, work which it was the teachers' duty to perform, undertaken for essentially economic reasons;

(4) that this Court had already definitively ruled that employees in the public (civil) service, unlike those in the private sector, do not have the right to strike, although guaranteed the right to self-organization, to petition Congress for the betterment of employment terms and conditions and to negotiate with appropriate government agencies for the improvement of such working conditions as are not fixed by law;[18]

(5) that upon the foregoing premises, it was prima facie lawful and within his statutory authority for the respondent Secretary of Education to take the actions complained of, to wit: issue a return-to-work order, prefer administrative charges against, and place under preventive suspension, those who failed to comply with said order, and dismiss from the service those who failed to answer or controvert the charges;[19]

The Court has not since been presented with any consideration of law or established fact that would impair the validity of these postulates or preclude continued reliance thereon for the purpose of resolving the present petitions on their merits.

The underlying issue here is due process; not whether the petitioners have a right to strike, which it is clear they do not, however justifiable their reasons, nor whether or not there was in fact such a strike, it being equally evident from the pleadings that there was, and there being no dispute about this. What, therefore, is brought before the Court is the question of whether or not any rights of the petitioners under the due process clause of the Constitution as it applies to administrative proceedings were violated in the initiation, conduct, or disposition of the investigations complained of.

Indeed, what the petitioners in G.R. No. 95590 proclaim about denial of due process being their "paramount complaint" * * * "central to their prayer for interlocutory relief"[20] could as well be said of the merits of their main cause as of their plea for a restraining order pendente lite or a preliminary injunction.

There are, however, insuperable obstacles to the Court's taking up that issue and resolving it in these cases. Said issue is not ripe for adjudication by this Court in the exercise of its review jurisdiction; and this, for the obvious reason that it is one of fact. The petitions and subsequent pleadings of the petitioners allege facts and circumstances which, it is claimed, show denial of due process, citing as supposedly "representative samples"[21] among others: (a) that teachers were dismissed on the sole basis of unsworn reports of their principals and without evidence of their alleged failure to obey the return-to-work order; (b) that the charge sheets failed to specify the particular charges or offenses allegedly committed; (c) that some teachers were not furnished sworn complaints, and others were suspended without any formal charges; (d) that teachers who attempted to return within a reasonable time after notice of the return-to-work order were not accepted back; and similar allegations.

These are however denied and disputed by the public respondents, who set forth their own version, initially in their separate Comments in both cases and, later and in greater detail, in their Consolidated Memorandum of December 3, 1990, supra, from which the following passages are quoted:

"Petitioners in G.R. No. 95545 and G.R. No. 95590 admit engaging in strike (referred by semantic interplay as "concerted activity" or "mass action") directed against public respondent Carino beginning September 17, 1990 (MPSTA Petition, pp. 3, 9; ACT Petition, pp. 15-16).

To avoid the disruption of classes, public respondent Carino, also on September 17, 1990, issued a 'return to work order' reminding striking workers that in law, they cannot engage in strike and warning them that dismissal proceedings will be instituted against them if they do not return to work within 24 hours from their walkout (MPSTA Petition, p. 4; ACT Petition, p. 15) and a memorandum to DECS officials instructing them to notify the striking teachers to return to work within 24 hours from their walkout and to initiate dismissal

proceedings against those who defy the return to work order as well as to hire temporary replacements (MPSTA Petition, p. 4; ACT Petition, pp. 15-16).

The striking teachers who did not heed the return-to-work order were administratively charged and preventively suspended for ninety days for grave misconduct, gross neglect of duty, insubordination, refusal to perform official duty, absence without leave beginning September 17, 1990 and other violations of Civil Service Law, rules and regulations. All the striking teachers were served with the suspension orders and the charge sheets notifying them of the charges and giving them five (5) days from receipt of the charge sheets within which to file their respective answers.

With the filing of the administrative complaints and the receipt of the answers of some of the teachers involved, public respondent Carino on October 8, 1990 issued a Memorandum forming an Investigation Committee composed of Atty. Reno Capinpin of DECS Administrative Services as Chairman; Dr. Alberto Mendoza, representing the Division Supervisors, Atty. Evangeline de Castro, representing the City Superintendent of Schools of Manila, and Atty. Isaias Melegrito, representing the National PPSTA Organization, as members. Copy of the aforesaid Memorandum is hereto attached as Annex "1".

The committee was authorized to meet everyday, even as Special Prosecutors from the Department of Justice on detail with the DECS were designated to handle the prosecution during the formal hearings (Ibid.).

Petitioners in 'G.R. No. 95545' and 'G.R. No. 95590' admit having received the charge sheets and notices of preventive suspension wherein they were given five days from receipt of the charges within which to file their answers (MPSTA Petition, p. 4; ACT Petition, p. 16, Annexes 'X' to 'AA').

* * *.

* * * Many striking teachers received their preventive suspension orders and the charge sheets from their respective principals when they visited their schools. Many refused to receive and sign receipt therefore; others tore up the preventive suspension orders and charge sheets in front of their principals. Instead, they took the occasion to belittle and insult the substitute teachers who took over their classrooms temporarily.

The striking teachers were given a period of five days to file their Answers in line with Sec. 8, Rule III of Rules on Administrative Disciplinary Cases in CSC Memorandum Circular No. 46, S. 1989. The motion for extension of time to file Answer was denied by DECS Task Force because it was dilatory -- the alleged reason being that Atty. Fabros is handling 2,000 cases of teachers. The DECS was constrained by Sec. 38(d) of P.D. 807 and Sec. 8 of the Memorandum Circular mentioned which mandate that administrative cases must be decided within 30 days from the filing of the charges. Another reason was that many refused to receive the notice of charges. Also, to delay the resolution of the cases was to their disadvantage.

Moreover, another reason proffered was that the Regional Trial Court (RTC) of Manila still had to act on the petition before it. However, the Motion was filed AFTER the RTC Manila had already dismissed the Petition.

Nevertheless, answers to the administrative complaints started pouring in at the DECS, as prepared personally by the striking teachers or by their lawyers.

After initial assessments of the reports coming in from the principals of the schools concerned and the answers of the striking teachers, the DECS Special Task Force prepared on October 9, 1990 and submitted to respondent Secretary Carino the Guidelines and Criteria as to the nature of the evidence to be assessed and the corresponding penalty to be imposed against the striking teachers, which was approved by respondent Secretary Carino on the same day. A copy of the aforesaid Guidelines and Criteria is hereto attached as Annex '2'. Thereafter, the DECS Special Task Force proceeded with its task of investigating the cases against the striking teachers.

Those who refused to sign the DECS return-to-work order, the preventive suspension orders and the charge

sheets, some even tearing up the documents presented to them by their principals were considered by the DECS Special Task Force as having waived their right to be heard; their cases had to be resolved on the basis of the records. Nevertheless, the DECS Special Task Force summoned the principals concerned, who then testified under oath confirming their reports on the absences of the striking teachers. Some clarificatory questions were asked of them on the manner of the service of the DECS orders and the situation obtaining in their schools.

For those who answered the charge sheets, the DECS Special Task Force set the administrative cases for hearing. Many of the striking teachers refused to appear at the hearings but preferred to submit their case on the basis of their answers.

With regard to those who attended the hearings, each of the absent or striking teachers was investigated and asked questions under oath on their answers and the reasons for their absences and/or joining the teachers' strike. Some teachers reiterated their answers to the charge sheets, either giving justifiable reasons for their absences on the days mentioned or maintaining their stubborn stand that they have all the right to absent themselves from classes in the exercise of their constitutional right to join mass action to demand from the government what are supposedly due them. Still the DECS Special Task Force was not satisfied with their written answers and explanation during the hearings. The principals of the striking teachers were summoned and they confirmed under oath their reports of absences and/or on teachers joining the strike.

After having conducted fully their investigations, the DECS Special Task Force submitted in series their investigation reports and recommendation for each category of striking teachers to respondent Secretary Carino. The investigation reports, together with their supporting documents, submitted by the DECS Special Task Force indicated clearly the manner and conduct of the administrative hearings, the nature and weight of the evidence adduced, and the corresponding penalty or exoneration recommended.

On the bases of the investigation reports and recommendations of the DECS Special Task Force, and after evaluating the reports and its documents attached, respondent Secretary Carino promulgated the decisions either for exoneration, suspension or dismissal. Copies of the DECS decisions of exoneration, suspension or dismissal were forwarded to the principals of the striking teachers concerned. Those exonerated were allowed to resume their duties and received their back salaries. Some of the teachers either suspended or dismissed have already received the copies of the decisions, either personally or through mail.

* * *"[22]

This copious citation is made, not to suggest that the Court finds what is stated therein to be true and the contrary averments of the petitions to be false, but precisely to stress that the facts upon which the question of alleged denial of due process would turn are still in issue, actively controverted, hence not yet established.

It is not for the Court, which is not a trier of facts, as the petitioners who would now withdraw correctly put it, to make the crucial determination of what in truth transpired concerning the disputed incidents. Even if that were within its competence, it would be at best a monumental task. At any rate, the petitioners cannot -- as it seems they have done -- lump together into what amounts to a class action hundreds of individual cases, each with its own peculiar set of facts, and expect a ruling that would justly and correctly resolve each and everyone of those cases upon little more than general allegations, frontally disputed as already pointed out, of incidents supposedly "representative" of each case or group of cases.

This case illustrates the error of precipitate recourse to the Supreme Court, especially when numerous parties disparately situated as far as the facts are concerned gather under the umbrella of a common plea, and generalization of what should be alleged with particularity becomes unavoidable. The petitioners' obvious remedy was NOT to halt the administrative proceedings but, on the contrary, to take part, assert and vindicate their rights therein, see those proceedings through to judgment and if adjudged guilty, appeal to the Civil Service

Commission; or if, pending said proceedings, immediate recourse to judicial authority was believed necessary because the respondent Secretary or those acting under him or on his instructions were acting without or in excess of jurisdiction, or with grave abuse of discretion, to apply, not directly to the Supreme Court, but to the Regional Trial Court, where there would be an opportunity to prove the relevant facts warranting corrective relief.

Parties-litigant are duty bound to observe the proper order of recourse through the judicial hierarchy; they by-pass the rungs of the judicial ladder at the peril of their own causes.[23] This Court is a court of last resort. Its review jurisdiction is limited to resolving questions of law where there is no dispute of the facts or the facts have already been determined by lower tribunals, except only in criminal actions where capital penalties have been imposed.

WHEREFORE, both petitions are DISMISSED, without prejudice to any appeals, if still timely, that the individual petitioners may take to the Civil Service Commission on the matters complained of. The motions to withdraw, supra, are merely NOTED, this disposition rendering any express ruling thereon unnecessary. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Paras, Gancayco, Bidin, Grino-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gutierrez, Jr., Cruz, Feliciano, Padilla, and Sarmiento, JJ., see dissenting opinion.

[1] as the petition in G.R. No. 95590 puts it

[2] Rollo, G.R. No. 95590, pp. 9-19

[3] Rollo, G.R. No. 95445, pp. 3-4

[4] Rollo, pp. 16-17

[5] Annexes L and L-1, petition, G.R. No. 95590; Rollo, p. 53

[6] Annexes M and N, petition, G.R. No. 95590; Rollo, pp. 54-55

[7] Annexes X, Y, Z and AA, Petition; respondents' Consolidated Memorandum of December 3, 1990, pp. 3-4, and Annex 1 thereof; both in G.R. No. 95590; Rollo, pp. 71-81, 326-327, 358; see also respondents' Comment dated November 27, 1990, Rollo, pp. 104, 106-107)

[8] Annex U, Petition, G.R. No. 95590; Rollo, pp. 67-68

[9] Public respondents' Consolidated Memorandum; Rollo, G.R. No. 95590, pp. 324, 350

[10] docketed as Civil Case No. 90-54468

[11] Annex A, Petition, G.R. No. 95445; Rollo, pp. 15-18

[12] Rollo, G.R. No. 95590, pp. 55-56

[13] Rollo, G.R. No. 95445, pp. 73-103; Rollo, G.R. No. 95590, pp. 104-135

[14] Rollo, G.R. No. 95590, pp. 466-482

[15] on February 22, 1991 and April 4, 1991; Rollo, G.R. No. 95590, pp. 526-528; 534-537

[16] on April 4, 1991, for the public respondents by the Solicitor General; no opposition was filed to the

subsequent motion; it would, at any rate, have been merely redundant, both motions being identical in terms, as already stated.

[17] pars. 3.20 and 3.21, Petition in G.R. No. 95590; Rollo, p. 17

[18] Social Security System Employees Association (SSSEA) vs. Court of Appeals, 175 SCRA 686, citing Alliance of Government Workers vs. Minister of Labor and Employment, 124 SCRA 1

[19] Chapters 2, 7 and 8 of Book IV, Administrative Code [E.O. 292, as amended by RA 6733; sec. 37[b], P.D. 807; sec. 28[c], RA 2260, the Civil Service Act of 1959 in relation to sec. 36 of P.D. 807; Memorandum Circular No. 30, s. 1989, of the Civil Service Commission

[20] Motion for Reconsideration of January 4, 1991; Rollo, pp. 485,486

[21] Motion for Reconsideration, supra; Rollo, G.R. No. 95590, pp. 491 et seq.

[22] Rollo, G.R. No. 95590, pp. 325-327, 331-335

[23] Enrile vs. Salazar, 186 SCRA 217, 231-232

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dissenting OPINION

CRUZ, J.:

It appears to me from my reading of the ponencia and the several dissents that the petitioners have established prima facie case of arbitrariness on the part of the government that would justify direct and immediate action from the Court as an exception to the regular procedure.

While I do agree that there are many factual matters to be ascertained and that this task belongs in the first instance to the administrative authorities. I feel that precisely because of the number and prolixity of these issues, let alone the hundreds if not thousands of teachers involved, this Court must grant the petitioners at least temporary relief pending the termination of the proceedings below. These proceedings have been dragging on for months and will continue even longer, perhaps for years. In the meantime, the petitioning teachers are out in the cold, without employment or income and with only their hope, grown forlorn, I am afraid, in the justice of this Court.

I can understand Justice Narvasa's concern over the disarrangement of the well-ordered system of judicial review and the resultant heavy burden that will be laid on the Court. However, I do not propose that we assume the role of the trier of facts and encumber ourselves with the task of deciding the hundreds of administrative cases being heard (or better heard) below by the DECS or the Civil Service Commission. I am not prepared at this point to say that the Court should simply pronounce the dismissal of the petitioners as arbitrary and to order their reinstatement with back salaries. I would instead join Justice Padilla's suggestion that the teachers be ordered reinstated in the meantime, without prejudice to their investigation in accordance with the prescribed procedure.

I am not unaware of the decision of the Court in the SSS case prohibiting members of the Civil Service from engaging in strikes and similar acts. I submit, however, that this ruling, assuming it to be correct, is no license for

the authorities to treat their employees with disdain and to flatly ignore their legitimate complaints, with the expressed threat that they would be removed if they should be so rash as to insist on their demands. In my view, that is what Secretary Cariño has done.

Government workers, whatever their category or status, have as much right as any person in the land to voice their protests against what they believe to be a violation of their interests. The fact that they belong to the Civil Service has not deprived them of their freedom of expression, which is guaranteed to every individual in this country, including even the alien. It would be ridiculous to even suggest that by accepting public employment, the members of the Civil Service automatically and impliedly renounce this basic liberty. This freedom can at best be regulated only but never completely withdrawn.

When their first feeble complaints were not acted upon, the teachers had a right to speak loudly and more insistently, and to show that their protests did not come from only a disgruntled few but from a considerable number of them. They did this through their mass action in hopes that this way they would be better heard and ultimately needed. They were not. Instead, they were threatened with dismissal and some were in fact dismissed. In effect, they were told to shut up or face the consequences. I regard the return-to-work order as merely secondary and incidental, for the primary purpose of the DECS authorities was to break up the demonstration and muzzle the demonstrators. Unquestionably, these individual teachers could not speak as effectively in their controlled classrooms. What the Secretary sought was to deny the teachers the right to assemble and petition the government for redress of their grievances on the sanctimonious excuse that they were needed by their students.

I for one believe that the prohibition of members of the Civil Service from striking – which, significantly, is not found in the Constitution – requires a careful re-examination. It is so easy, as the present case has demonstrated, to use it as a bludgeon to silence complaint, however legitimate. Complaint is a weapon of the worker, and it is more effective if manifested not by him alone but with his co-workers. Under the present ruling, the workers in the private sector may complain collectively and if necessary declare a strike to enforce their demands, but this recourse is denied the public employees even if their demands are no less valid. In this sense, the freedom of expression of the civil servant is diminished and his right to improve the conditions of his employment is correspondingly reduced, and only because he belongs to the public sector.

It is so easy to say that the education of the youth should not be disrupted but we should not forget that the protection of freedom of expression is no less important. Indeed, the quality of education would deteriorate in an atmosphere of repression, when the very teachers who are supposed to provide an example of courage and self-assertiveness to their pupils can speak only in timorous whispers. The classroom should be an incubator of freedom, not fear.

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Dissenting OPINION

Feliciano, J.:

With regret, I find myself unable to concur in the majority opinion. I would associate myself with the reasoning and conclusions (though not necessarily with all the adjectives and adverbs) of the dissenting opinion of Gutierrez, J. as well as the conclusions reached by Padilla and Sarmiento, JJ. in their respective dissenting

opinion.

Here I merely wish to underscore the constitutional issue which appears to me to be raised in the instant case by the contraposition of, on the one hand, the prohibition against employees in the public sector going on strikes and, on the other hand, the rights of free speech and of assembly and petition of those same employees. In *Social Security System Employees Association (SSSEA) v. Court of Appeals* (175 SCRA 686 [1989]), the Court, through Cortes, J., pointed out that the prohibition against strikes in the public sector is presently founded upon Memorandum Circular No. 6, Series of 1987, of the Civil Service Commission dated 21 April 1987, and indirectly and impliedly, upon Executive Order No. 180 dated 1 June 1987 which provides guidelines for the exercise of the constitutional right of government employees to organize themselves. The prohibition is not, in other words, even statutory in nature but merely administrative or regulatory in character and the Court took explicit note of the absence of legislation either prohibiting or allowing strikes, or even merely regulating the exercise of a right to strike by government employees. The policy embodied in that prohibition is admittedly a legitimate and important one: to prevent or minimize the disruption and paralysis of the operations of government, especially the essential services rendered by it to society at large. At the same time, that the rights of free speech and of peaceful assembly and petition for redress of grievances are at least equally important and critical for the maintenance of a free, open and democratic polity, is not disputed by any one.

It seems to me that the majority opinion has considered the administrative prohibition of strikes in the government sector as an absolute given. There appears no visible evidence of an effort to explore the scope and limits of applicability of that prohibition. It would seem reasonably clear, however, that we cannot semper et ubique give exclusive relevance to that simple prohibition, that there are at stake here also the competing public values and interests implicit in free speech and peaceable assembly and petition, and that those rights too cannot be treated as absolutes without any regard to the necessities of orderly and efficient governance of a developing country with obviously finite resources. The requirements of both desiderata must be balanced, consciously, with realism and sensitivity, in particular situations such as that presented in the instant case and points or lines of equilibrium drawn, however tentatively.^[1] My concern, and this is submitted with great respect, is that in the instant case, the Court has not sufficiently engaged in the required balancing operation and has instead acted and spoken as if the only societal interest involved is that of the government in the maintenance of its operations and activities. The teaching of school children is obviously important, indeed fundamental. Some of the leaders of some of the teachers' organizations may be non-teachers and possibly professional agitators. But the refusal to meet with and discuss the pleas and grievances of the genuine public school teachers and the summary and mass disciplinary sanctions with which the respondent DECS officials have responded may produce, and appear in fact to have produced, the very stoppage and prolonged disruption which Memorandum Circular No. 6 seeks to avoid.

There is, of course, no facile formula by which the competing interests may be adjusted and balanced, one with the other, in very specific contexts like the one here existing. But adjustments and compromise there must be. It seems to me very difficult to suppose that government service may be rendered only at the cost of foregoing the exercise (or, as Gutierrez, J. puts it, the effective exercise) of the rights of free speech and assembly and petition. To require civil servants in general, and public school teachers in particular, to leave at home their constitutional rights when they go to work, is to exact mindless conformity and ductility, no matter how immediate, serious and pervasive the problems and grievances may be, as the cost of serving the Republic. That those problems and grievances may at bottom be economic rather than political certainly does not change the legal equation. Such an exaction is not to be countenanced in our constitutional system: it imposes oppressive costs upon the individual human spirit and intolerable burdens on national development.

I vote to GRANT the Petitions.

[1] There is at least tentative but perhaps growing recognition in our case law of the need for a mode of judicial analysis which takes account of the differing legitimate individual and social interests, reflected in constitutional and statutory provisions or in general principles of law, competing for ascendancy in particular disputes presented for adjudication (see, e.g., *Zaldivar v. Gonzales*, 166 SCRA 316 [1988]; *Ayer Pty. Ltd. v. Capulong*, 160 SCRA 861 [1988]; *Lagunzad v. Vda. de Gonzales*, 92 SCRA 476 [1976]; Separate Opinion of Castro, C.J. in *Gonzales v. Comelec*, 27 SCRA 835 [1969]).

This kind of analysis and evaluation seems an indispensable part of the intellectual effort to reach rational decision whether judges acknowledge it or not, whether they are aware of it or not. In other jurisdictions, the concept and practice of judicial balancing of constitutional values are widely recognized; see Aleinikoff, *Constitutional Law in an Age of Balancing*, 96 Yale L. J. 943 (1987); Coffin, *Judicial Balancing: The Protean Scales of Justice*, in *The Evolving Constitution*, 280 (Dorsen ed., 1987).

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DISSENTING OPINION

GUTIERREZ, JR., J.:

In dissenting from the majority opinion, I draw certain conclusions from the records which I feel should guide any adjudication of the issues in these petitions.

My first conclusion refers to the denial of basic rights of an indispensably essential segment of our society - the teachers who educate our children.

The second refers to the cold hearted punishment which we allow to be inflicted upon our poor school teachers. By skirting the fundamental issue involved, the Court is denying the petitioners fairness, substantive due process, and simple humanity. The so-called investigations which led to the initial dismissals were a farce. Instead of 90 day preventive suspensions, the Department of Education, Culture, and Sports (DECS) immediately imposed punitive dismissals with no semblance of rudimentary due process. All other civil service employees undergoing investigation are reinstated after ninety days. Our teachers have been out of work for more than ten (10) months without income while still undergoing administrative investigation. The suspension is indefinite if not permanent.

Patience has its limits. There are times when even the most constant and dedicated public servants must give vent to their feelings and express their grievances at an unfeeling and inept bureaucracy which seems to be incapable of attending to their officials needs. Professional agitators may have infiltrated the teachers and muddled their demands with such outlandish calls as the closure of foreign military bases, a cap on the payments of foreign debts and other issues not pressingly relevant to teachers. But the basic demands are legitimate and few.

Teachers need a decent living wage, one in keeping with the dignity and worth of their profession. Not only are their salaries unbelievably low but payment is often unreasonably delayed. When the national government gives a little increase, a corresponding amount is reduced from the city share. Teachers have to beg for allowances to be restored. The latest examples are the PERA adjustments. As of July 12, 1991, most employees of the government

had received and spent their PERA allowances. Our public school teachers were still waiting. Whatever the payment signifies - salary, bonus, allowance, and even retirement or death benefits - the last one to receive what all government employees are entitled to, is the public school teacher. It is no small wonder that thousands of school teachers swallow their dignity and accept employment as domestic servants overseas. I am not aware of any government program which seeks to reverse the new definition of "Filipina" as a domestic servant of foreigners whose education is often lower than that of their maids. Neither am I aware of any determined effort to see to it that school teachers always get their salaries, allowances, and benefits on time.

I mention the unconcern because it is what forced the petitioners to engage in mass concerted action.

We agree that employees in the civil service may not engage in strikes, walkouts and temporary work stoppages like workers in the private sector. (*Social Security System Employees Association v. Court of Appeals*, 175 SCRA 686, 698 [1989]). Employment in the Government is governed by law. Government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The terms and conditions of employment are effected through statutes and administrative rules and regulations, not through collective bargaining agreements. (*Alliance of Government Workers, et al. v. Minister of Labor and Employment*, 124 SCRA 1, 13 [1983]).

The above rulings remain good law.

In the first place, if this Court uses the word "strike" to describe what the petitioners staged, it tends to unfairly color and prejudge their case. "Strike" becomes a pejorative epithet that leads to a certain result not so much because of facts but because of its semantic connotations. The teachers were in the main not asking for terms and conditions greater than those accorded by law. Their basic demand was to be given on time what the law already provides for them. It was only after certain elements penetrated their ranks and in the heat of the peaceful assembly that such demands as closure of military bases and laws increasing salaries formed part of the leaders' statements. The concerted action was more of a peaceful assembly, an exercise of speech by a gathering, not a strike.

In the second place, when Government is deaf, when bureaucracy denies to our teachers the timely payment of the pittance provided by law, should any ban still be enforced? And enforced in a peremptory and oppressive manner? Should not the most basic freedom of speech and assembly in these particular cases outweigh all considerations which ban strikes by civil service employees?

We agree with Justice Cardozo in *Palko v. Connecticut*, 302 US 319 [1937] that freedom of speech is the matrix, the indispensable condition of nearly every other form of freedom.

We have cited with approbation Justice Brennan's stressing a "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials" (*New York Times, Co. v. Sullivan*, 376 US 254 [1964]).

Teachers have legitimate and pressing grievances. When Government consistently fails to act on these grievances, the teachers have a right to speak in an effective manner. For speech to be effective, it must be forceful enough to make the intended recipients listen.

I view the issue in these cases as more transcendent than the simple one of whether or not public school teachers may go on strike. To me, the issue is the freedom to effectively speak. When the members of a noble profession are demeaned by low salaries and inattention to their needs, surely their freedom to speak in a manner and at a time as is most effective far outweighs conventional adherence to orthodox civil service rules on proper conduct

and correct behavior.

My other point has to do with an anomalous investigation procedure and considering the nature of the offense, what is tantamount to cruel punishment.

I gather from the records and the majority opinion that the cases of individual teachers are still being investigated and may be the subject of appeals to the Civil Service Commission.

If that is so, I cannot understand why the petitioners remain suspended up to the present. They should have been reinstated after 90 days of preventive suspension. It is axiomatic that civil service employees and even elected officials cannot be preventively suspended for more than 90 days (Section 42, P.D. 807; *Deloso v. Sandiganbayan*, 173 SCRA 409 [1989]; *Doromal v. Sandiganbayan*, 177 SCRA 354 [1989]).

If the suspension is preventive, it has lasted too long. If punitive, it is illegal and violative of due process.

There are anywhere from 800 to 2,000 teachers involved - perhaps even more, once the unwieldy procedures of DECS can arrive at accurate figures.

On October 8, 1990, the Department Secretary constituted an investigating committee of four, repeat, four members to act on the formal charges.

Three days later, on October 11, 1990, the DECS found 20 teachers guilty and dismissed them. On December 3, 1990, 658 teachers were dismissed, 40 were suspended for one year, 33 for 9 months, and 122 for six months. There were 398 exonerations. I understand there were scores who had to hurriedly look for medical certificates that they were "sick" while hundreds were urged to cringe and grovel with humiliating mea culpas.

Even if the investigating committee or committees were staffed by supermen and superwomen, it is inconceivable that 658 capital sentences of dismissal could be made in so short a time. Any officer who has conducted an honest to goodness administrative investigation cannot but conclude that the procedures which were followed violated the norms of fair play and due process. The decisions were the products of pre-judgment based on perfunctory paper investigations. Surely our public school teachers deserve better treatment.

If subsequent to the sentences of dismissal, the teachers were properly served with summons, given time to secure the services of competent counsel, allowed to defend themselves and cross-examine witnesses against them, punished on the basis of reasoned decisions stating the facts and the law, and otherwise given their rights to due process, the initial illegal actions should be set aside and the teachers reinstated in the meantime.

Considering the circumstances which led the teachers to engage in mass action, the penalty of dismissal is too grave. It is punishment which is cruel.

The officers and men of the Armed Forces who started a coup at the Manila Hotel were punished by being made to do a few push-ups. The coup attempt in December, 1989 was almost successful. And yet, only the officers are meted significant punishment. The enlisted men are readily pardoned. I see no reason why similar treatment cannot be given our public school teachers. Their only offense was to speak out in an effective manner against studied neglect.

Even if all requirements of due process in administrative investigations are followed and the evidence points unerringly to guilt, a public school teacher should not be meted out a penalty harsher than a few months suspension. In Labor Law, dismissals are imposed only against a handful of leaders who committed acts of violence or instigated illegal strikes. (*De Ocampo, Jr. v. NLRC*, 186 SCRA 360 [1990]) As earlier stated, the word "strike" under Labor Law should not be used in pejoration to denigrate a peaceful assembly.

I repeat that equitable considerations call for compassion. Public school teachers are the most hardworking, uncomplaining, easy to satisfy, and dutiful segment of our public service. They are also the most underpaid professionals with a take home pay of a little over one hundred pesos a day* which is the income of an unskilled laborer. They deserve justice and compassion.

CONSIDERING THE FOREGOING, I vote to GRANT the petition, to set aside the questioned orders of the Secretary of Education, Culture, and Sports, to order reinstatement of the petitioners, and to direct the payments of their salaries and backpay.

* A Manila public school teacher with several years of service gets P3,102.00 basic salary and P802.92 allowances every month but an average of P615.00 is also deducted for income taxes, medicare, GSIS insurance, and other mandatory deductions. A new teacher receives only P3,102.00 with the same kinds of deductions.

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DISSENTING OPINION

PADILLA, J.:

The majority opinion has compressed the issue to whether there has been a denial of due process to the teachers, disregarding altogether the constitutional right to peaceably assemble and petition the government for redress of grievances (Art. III, par. 4 Bill of Rights of the 1987 Constitution). But even limiting oneself to the issue of denial of due process, the majority opinion asserts that it is not ripe for adjudication by the Court in the exercise of its review jurisdiction because the issue involves questions of fact. But why then does the majority opinion proceed to declare/recognize the mass action of the teachers as illegal? Does this not constitute a categorical finding of fact leaving the dismissed or suspended teachers without any other recourse?

Due process prior to termination or suspension consisted of, according to the majority opinion, the following –

“On the record, what did happen was that, based on reports submitted by the principals of the various public schools in Metro-Manila, the respondent Secretary of Education had filed *motu proprio* administrative complaints against the teachers who had taken part in the mass actions and defied the return-to-work order on assorted charges like grave misconduct, gross neglect of duty, gross violation of the Civil Service Law, absence without official leave, etc., and placed them under 90-day preventive suspension. The respondents were served copies of the charge sheets and given five (5) days to submit answer or explanation. Later, on October 8, 1990, the respondent Secretary constituted an investigating committee of four (4) to determine and take the appropriate course of action on the formal charges and designated the special prosecutors on detail with the DECS to handle their prosecution during the formal hearings.

On October 11, 1990, the respondents Secretary of Education rendered the first of his now-questioned decisions on the administrative complaints. In Case No. DECS 90-002, he found twenty (20) respondent teachers guilty of the charges proffered against them and dismissed them from office, effective immediately. In the other investigations that followed and as of December 3, 1990, 658 teachers were dismissed, 40 were suspended for one (1) year, 33 for nine (9) months, and 122 for six (6) months, 398 were exonerated.” (pp. 4-5)

It is to be noted that the above proceedings took place in a charged atmosphere. Objective and dispassionate appraisal of the merits of each case could hardly be expected in such a setting.

“Whenever a governmental body ????? so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. As stated by Mr. Justice Frankfurter concurring in *Joint Anti-Fascist Refugee Committee v. McGrath*, 1951, 341 U.S. 123, 163:

‘Whether the ex parte procedure to which the petitioners were subjected duly observed ‘the rudiments of fair play’, . . . cannot . . . be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment.’”[1] (Underlining supplied)

The nature of the hearings should vary depending upon the circumstances of the particular case.[2] The constitutional guarantee of due process means concurrence of substantive and procedural due process. The narration in the majority opinion speaks only of the latter, completely disregarding the substance of petitioners’ claims. It would appear that dismissals and suspensions of the teachers were meted out de rigor and in rapid succession, evidently in retaliation for airing their grievances against the government. This is not to suggest an elaborate procedural mechanism, but only fidelity to the minimum safeguards untainted by arbitrariness and undue haste.

In my view, the public school teachers are the silent and unsung heroes of our society. They deserve more compassion, if not more understanding, when they break their silence to plead and press for benefits they perceive have been unjustly denied them. For it can not be overlooked that public school teachers are terribly underpaid when related to the responsibilities they discharge in moulding the character of our youth. The government should itself undergo an introspective re-arraignment of its priorities and values approaching the problem of how to treat the teachers with fairness and justice.

Denial of due process is an issue which is ripe for adjudication right in this Court and in this case. The petition should be granted and the cases remanded to the DECS for proper re-determination of the culpability of each teacher, this time, in an atmosphere compatible with due process. Meanwhile, they should be reinstated pending the outcome of such proceedings, including a recourse by appeal to the Civil Service Commission.

[1] Gillhorn, Walter; Bryse, Clark; Strauss, Peter L. *Administrative Law: Cases and Comments*, 7th Edition, Foundation Press, 1979, p. 430

[2] *Dixon vs. Alabama State Board of Higher Education*, United States Court of Appeals, Fifth Circuit, 1961-294 F 2d 150

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DISSENTING OPINION

SARMIENTO, J.:

Like Justice Gutierrez; I have difficulty concurring with the majority.

What I indeed find apparent is that a thousand or so of our countrymen will be out of work because the Supreme Court can not supposedly try facts.

The duty of the Court, as the Constitution expresses it, is, among other things:

... to determine whether or not there has been a grave abuse of discretion...on the part of any branch or instrumentality of the Government.[1]

It is a duty, so I submit, from which the Court can not shirk on the handy excuse that it is being made to try facts. I submit that it is a duty that often requires, precisely, a factual inquiry.

If we are being asked to try facts, it is not the first time we would have been asked, and complied. In *Lansang v. Garcia*,[2] we did satisfy ourselves that the facts warranted an act of the Executive. We did go to great lengths to sift evidence.

The nagging fact (no pun intended) is that apparently, we are not truly talking about "facts" here. The nagging fact, as Justice Gutierrez points out, is that the petitioners have been under suspension for the last ten months, and the sole question, apparently, is whether or not in the midst of this fact, Secretary Cariño acted arbitrarily.

I do not think that the majority has understood enough the gravity of teachers' condition. As Justice Gutierrez points out, our teachers have long been the most neglected, yet the most forbearing members of the public service. "[I]t [the Government's lack of concern] is what forced the petitioners," according to Justice Gutierrez, "to engage in mass concerted action." [3] I would like to add that maybe, the Government had it coming.

As the majority avers, these cases are not all about whether the petitioners could have validly gone on a strike--that question has long been settled by this Court--but rather, whether or not they have been given due process as a result of investigations arising from the strike. I submit that due process is a perfectly legitimate issue to debate in Court--an issue involving the mentors of the nation's children no less.

I also submit that it is to trivialize the noblest profession, if it is not to trivialize the serious crisis confronting the state of Philippine education, to dismiss these complaints as if it involved simple personalities demanding money. If Cariño acted as if it were that, and as if it were a matter alone of "they struck so I fired them," I submit that we ought to know better.

The State assures education for all.[4] It also gives priority to education, as an indispensable process in nation-building.[5] There is no harm in listening to our educators.

I therefore vote to grant both petitions.

[1] CONST., art. VIII, sec. 1.

[2] Nos. L-33964, 33965, 33973, 33982, 34004, 34013, 34039, 34265, 34339, December 11, 1971, 42 SCRA 448.

[3] Dissenting Opinion, Gutierrez, J., 3.

[4] CONST., supra, art. XIV, sec. 1.

[5] Supra, art. II, sec. 17.

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