

NORBERTO DE LA REA, PETITIONER-APPELLEE, VS. HON. ABELARDO SUBIDO, IN HIS CAPACITY AS CIVIL SERVICE COMMISSIONER, AND HON. JOSE D. CALDERON, GENERAL MANAGER, NATIONAL MARKETING ...

G.R. Nos. 26082. November 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

The following matters have been submitted to the Court for resolution:

(1) De la Rea's second motion for clarification and reconsideration filed on August 5, 1968 wherein he raises the following points:

"I

The holding of this Honorable Court that for services rendered as auditor or corporate auditor, NAMARCO, prior to the effectivity of the disapproval of his appointment as such, he was entitled to a salary of P15,600 per annum should be deemed modified by the change that transpired after the commencement of the action and during the pendency of this appeal, to wit: sometime in 1965 the salary of the Assistant General Manager, NAMARCO, was increased from P15,600.00 to P16,200.00 per annum effective retroactively as of July 1, 1964. The salary of the auditor is in an amount equal to the salary prescribed for the Assistant General Manager (Sec. 1, R.A. 2266);

II

The holding that after the effectivity of the disapproval of his appointment as auditor or corporate auditor, NAMARCO, de la Rea was entitled to a salary of P11,400.00 per annum which was the old rate of salary of the, City Auditor, Pasay City, should be deemed modified by Rep. Act 4477 which automatically adjusted the salary of the said office from P11,400.00 per annum to P15,000.00 per annum effective retroactively as of July 1, 1965;

III

Whatever excess in salaries that de la Rea received from the NAMARCO was collected in good faith on a bi-monthly basis, and, therefore, the refund to be made by him should be similarly on a bi-monthly basis;

IV

Since this Honorable Court found that de la Rea is and has been actually out of the service illegally on account of the pertinent decision and orders of the Civil Service Commissioner, de la Rea is entitled to back salaries from March 8, 1967 until reinstated, deducting therefrom, however, the penalty of suspension from office for six (6) months imposed upon him; and

V

Since de la Rea is deemed reverted to his former position as City Auditor, Pasay City, upon the disapproval of his appointment as auditor or corporate auditor, NAMARCO, his immediate reinstatement should be ordered pending the accounting to be made in the lower court."

(2) The motion for reconsideration filed by the Auditor General and the Commissioner of Civil Service on August 9, 1968 submitting the following issues:

(a) That the penalty of suspension for six months, without pay, imposed upon de la Rea by final decision of the Commissioner of Civil Service in connection with administrative charges filed against him should first be served by him - even assuming, *arguendo*, that he should be "deemed to have reverted" to his former position as Auditor of Pasay City, and that such period of suspension is not compensable with the first six months of the period during which de la Rea has actually been kept out of the service; (b) that de la Rea was not removed from office nor kept out thereof by reason of the decision and orders of the Commissioner of Civil Service but by reason of the writ of preliminary injunction issued by this Court on March 7, 1967; (c) that de la Rea should be deemed to have abandoned the position of Auditor of Pasay City when, after the Commissioner of Civil Service had disapproved his promotional appointment as NAMARCO Auditor, and considered him as still the Auditor of Pasay City, he refused to accept or abide by the ruling.

We shall first take up the grounds upon which de la Rea relies in support of his second motion mentioned above.

(1) It is an admitted fact that de la Rea[r]s promotional appointment to the position of Auditor or Corporate Auditor of NAMARCO carried a salary of P15,600 per annum - which was the same annual salary, at that time, for the position of Assistant General Manager of NAMARCO. It is also a fact that subsequently the latter's salary was increased to P16,200 per annum effective retroactively as of July 1, 1964. De la Rea claims that he is entitled to this latter increased salary of the Assistant General Manager of NAMARCO - to which the salary of the Auditor of the same entity should be equal - during the time he had actually served as Auditor of NAMARCO. We find this to be without merit.

The increase, by law or otherwise, of the annual salary of the Assistant General Manager of NAMARCO did not automatically and correspondingly increase that of its Auditor. For this purpose there was need of an appointment (promotional as to salary) fixing his new compensation at the increased rate (*Genato vs. Sychangco*, G. R. No. L-23095, May 12, 1967).

(2) For the same reason stated above, We find de la Rea's second contention with respect to the salary of the Auditor of Pasay City to be without merit.

(3) De la Rea's third contention is that the excess in salary that he is required to refund to NAMARCO having been collected in good faith on a bi-monthly basis, the refund should be made on the same basis, except for the amounts collected by him under our resolution of July 26, 1966 in G. R. No. L-26082 and the writ of execution pending appeal issued in his favor. This is also untenable. While he collected a portion of his salary on a bimonthly basis, the fact is that, actually, he has had full enjoyment of the total amount thereof. We deem it reasonable for him, therefore, to make the refund likewise in lump sum.

De la Rea next contends that since it has been ruled that he has been kept out of the service by reason of the decision and orders of the Civil Service Commissioner, he should be entitled to back salaries from March 8, 1967 until reinstated, deducting therefrom, however, the salary corresponding to the period of six months suspension imposed upon him as mentioned heretofore.

We have said in our emended decision of July 31, 1968 that, due to the peculiar facts involved, We were forced to

rely upon, and were actually guided by "broad considerations of fairness and equity" in rendering our decision.

Compensation for services not actually rendered is not the rule. In the case of de la Rea, there is no ground to say that NAMARCO and/or the Commissioner of Civil Service acted illegally or in bad faith to keep him out of office. As stated heretofore in our original decision and in our resolution deciding the first motion for reconsideration, de la Rea only became involved in the struggle between the office of the Auditor General, on the one hand, and the Commission of Civil Service, on the other, with respect to their respective power over appointments of corporate auditors. The decision rendered and orders issued by the Commission of Civil Service made effective by the writ of preliminary injunction issued by this Court must be presumed to be valid until reversed. As de la Rea chose to fight for what he deemed to be his rights as an appointee of the Auditor General, he must bear the consequences of his stand. The Court, therefore, feels that even the broad principles of equity in the light of which we resolved the issues raised in these cases would hardly justify his claim for back pay.

Lastly, as far as his reinstatement to the position of Auditor of Pasay City is concerned, the same should be accomplished only upon our decision in these cases becoming executory, the accounting to be made in the lower court re-garding the refund provided for in our original decision notwithstanding.

Coming now to the points raised in the motion of the Auditor General and the Commissioner of Civil Service, We feel that what we have said heretofore in this resolution, in the original decision and in the resolution of July 31, 1968, is enough to deny them. Consequently, whether de la Rea was removed or not, or was kept out of office as a result of the preliminary injunction issued by us on March 7, 1967 are questions that need no further discussion.

Lastly, We disagree - in the light of the facts herein involved - with the contention of the Auditor General and the Commissioner of Civil Service to the effect that de la Rea should be deemed to have abandoned the position of Auditor of Pasay City because, after the Commissioner of Civil Service had disapproved his promotional appointment as NAMARCO auditor and considered him as still the auditor of Pasay City, he refused to accept or abide by that ruling. Abandonment of a public office by one duly appointed thereto requires clear and strong proof. There is none in this case where the contention of NAMARCO and the Commissioner of Civil Service is based only upon an inference drawn from the fact that de la Rea continued acting as auditor of NAMARCO even after the Commissioner of Civil Service had disapproved his appointment thereto and considered him still as auditor of Pasay City. He was entitled, We believe, to do so while involved in a legal proceeding wherein the validity or correctness of the ruling of the Commissioner of Civil Service was the issue. On the other hand, the statement made in the motion for reconsideration filed by NAMARCO and the Commissioner of Civil Service to the effect that, upon the disapproval by the latter of de la Rea's appointment as NAMARCO auditor, said Commissioner considered him as still the auditor of Pasay City strengthens our ruling that upon such disapproval, de la Rea should be deemed reverted to the aforesaid office.

Anent the claim that de la Rea's return to the position of auditor of Pasay City will cause difficulties because other parties had been appointed to occupy the same in the meantime, all that We need to say is that that is an administrative problem to be resolved by proper authorities. To be borne in mind in connection therewith is the fact that those who were appointed to that position while these cases were pending must naturally be charged with knowledge of the pendency of said cases and that the result could affect their own appointment.

WHEREFORE, both motions under consideration are hereby denied.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

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