

**[ G.R. No. 187858, August 09, 2011 ]**

**THE CIVIL SERVICE COMMISSION, PETITIONER, VS. RICHARD G. CRUZ, RESPONDENT.**

**D E C I S I O N**

This petition for review on *certiorari* assails the decision<sup>[1]</sup> and the resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 105410. These assailed CA rulings reversed and set aside the ruling of the Civil Service Commission (CSC) in Resolution No. 080305<sup>[3]</sup> that denied respondent Richard G. Cruz's prayer for the award of back salaries as a result of his reinstatement to his former position.

**THE FACTS**

The respondent, Storekeeper A of the City of Malolos Water District (CMWD), was charged with grave misconduct and dishonesty by CMWD General Manager (GM) Nicasio Reyes. He allegedly uttered a false, malicious and damaging statement (*Masasamang tao ang mga BOD at General Manager*) against GM Reyes and the rest of the CMWD Board of Directors (*Board*); four of the respondent's subordinates allegedly witnessed the utterance. The dishonesty charge, in turn, stemmed from the respondent's act of claiming overtime pay despite his failure to log in and out in the computerized daily time record for three working days.

The respondent denied the charges against him. On the charge of grave misconduct, he stressed that three of the four witnesses already retracted their statements against him. On the charge of dishonesty, he asserted that he never failed to log in and log out. He reasoned that the lack of record was caused by technical computer problems. The respondent submitted documents showing that he rendered overtime work on the three days that the CMWD questioned.

GM Reyes preventively suspended the respondent for 15 days. Before the expiration of his preventive suspension, however, GM Reyes, with the approval of the CMWD Board, found the respondent guilty of grave misconduct and dishonesty, and dismissed him from the service.<sup>[4]</sup>

**CSC RULING**

The respondent elevated the findings of the CMWD and his dismissal to the CSC, which absolved him of the two charges and ordered his reinstatement. In CSC Resolution No. 080305, the CSC found no factual basis to support the charges of grave misconduct and dishonesty.

In ruling that the respondent was not liable for grave misconduct, the CSC held:

Cruz was adjudged guilty of grave misconduct for his alleged utterance of such maligning statements, "*MASASAMANG TAO ANG MGA BOD AT GENERAL MANAGER*". However, such utterance, even if it were true, does not constitute a flagrant disregard of rule or was actuated by corrupt

motive. To the mind of the Commission, it was a mere expression of disgust over the management style of the GM and the Board of Directors, especially when due notice is taken of the fact that the latter officials were charged with the Ombudsman for various anomalous transactions.

[5]

In ruling that the charge of dishonesty had no factual basis, the CSC declared:

Based on the records of the case, the Commission is not swayed that the failure of Cruz to record his attendance on April 21 and 22, 2007 and May 5, 2007, while claiming overtime pay therefor, amounts to dishonesty. Cruz duly submitted evidence showing his actual rendition of work on those days. The residents of the place where he worked attested to his presence thereat on the days in question.[6]

The CSC, however, found the respondent liable for violation of reasonable office rules for his failure to log in and log out. It imposed on him the penalty of reprimand but did not order the payment of back salaries.

The CMWD and the respondent separately filed motions for reconsideration against the CSC ruling. CMWD questioned the CSC's findings and the respondent's reinstatement. The respondent, for his part, claimed that he is entitled to back salaries in light of his exoneration from the charges of grave misconduct and dishonesty. The CSC denied both motions.

Both the CMWD and the respondent elevated the CSC ruling to the CA *via* separate petitions for review under Rule 43 of the Rules of Court. The CA dismissed the CMWD's petition and this ruling has lapsed to finality.[7] Hence, the issue of reinstatement is now a settled matter. As outlined below, the CA ruled in the respondent's favor on the issue of back salaries. This ruling is the subject of the present petition with us.

### **CA RULING**

Applying the ruling in *Bangalisan v. Hon. CA*, [8] the CA found merit in the respondent's appeal and awarded him back salaries from the time he was dismissed up to his actual reinstatement. The CA reasoned out that CSC Resolution No. 080305 totally exonerated the respondent from the charges laid against him. The CA considered the charge of dishonesty successfully refuted as the respondent showed that he performed overtime service. The CA thereby rejected the CSC's contention that the charge of dishonesty had been merely downgraded to a lesser offense; the CA saw the finding in CSC Resolution No. 080305 to be for an offense (failing to properly record his attendance) entirely different from the dishonesty charge because their factual bases are different. Thus, to the CA, CSC Resolution No. 080305 did not wholly restore the respondent's rights as an exonerated employee as it failed to order the payment of his back salaries. The CA denied the CSC's motion for reconsideration.

### **ISSUE**

WHETHER OR NOT [THE] RESPONDENT IS ENTITLED TO BACK SALARIES  
AFTER THE CSC ORDERED HIS REINSTATEMENT TO HIS FORMER

POSITION, CONSONANT WITH THE CSC RULING THAT HE WAS GUILTY ONLY OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.<sup>[9]</sup>

### ***CSC's position***

The CSC submits that the CA erred in applying the ruling in *Bangalisan*, requiring as a condition for entitlement to back salaries that the government employee be found innocent of the charge **and** that the suspension be unjustified. CSC Resolution No. 080305 did not fully exculpate the respondent but found him liable for a lesser offense. Likewise, the respondent's preventive suspension pending appeal was justified because he was not exonerated.

The CSC also submits that the factual considerations in *Bangalisan* are entirely different from the circumstances of the present case. In *Bangalisan*, the employee, Rodolfo Mariano, a public school teacher, was charged with grave misconduct for allegedly participating, together with his fellow teachers, in an illegal mass action. He was ordered exonerated from the misconduct charge because of proof that he did not actually participate in the mass action, but was absent from work for another reason. Although the employee was found liable for violation of office rules and regulations, he was considered totally exonerated because his infraction stemmed from an act entirely different (his failure to file a leave of absence) from the act that was the basis of the grave misconduct charge (the unjustified abandonment of classes to the prejudice of the students).

The CSC argues that in the present case, the charge of dishonesty and the infraction committed by the respondent *stemmed from a single act* - his failure to properly record his attendance. Thus, the respondent cannot be considered totally exonerated; the charge of dishonesty was merely downgraded to a violation of reasonable office rules and regulations.

Accordingly, the CSC posits that the case should have been decided according to our rulings in *Jacinto v. CA*<sup>[10]</sup> and *De la Cruz v. CA*<sup>[11]</sup> where we held the award of back salaries to be inappropriate because the teachers involved were not fully exonerated from the charges laid against them.

### ***The respondent's position***

The respondent maintains that he is entitled to reinstatement and back salaries because CSC Resolution No. 080305 exonerated him from the charges laid against him; for the purpose of entitlement to back salaries, what should control is his exoneration from the charges leveled against him by the CMWD. That the respondent was found liable for a violation different from that originally charged is immaterial for purposes of the back salary issue.

The respondent also asserts that the *Bangalisan* ruling squarely applies since the CSC formally admitted in its Comment to CMWD's petition for review before the CA that the penalty of reprimand is not a reduced penalty for the penalty of dismissal imposable for grave misconduct and dishonesty.<sup>[12]</sup>

## **THE COURT'S RULING**

## **We deny the petition for lack of merit.**

The issue of entitlement to back salaries, for the period of suspension pending appeal,<sup>[13]</sup> of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle - public officials are only entitled to compensation if they render service. We have excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law";<sup>[14]</sup> to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.<sup>[15]</sup>

The present legal basis for an award of back salaries is Section 47, Book V of the Administrative Code of 1987.

### **Section 47. Disciplinary Jurisdiction.** - x x x.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be *considered as having been under preventive suspension* during the pendency of the appeal in the event he wins an appeal. (italics ours)

This provision, however, on its face, does not support a claim for back salaries since it does not expressly provide for back salaries during this period; our established rulings hold that back salaries may not be awarded for the period of **preventive suspension**<sup>[16]</sup> as the law itself authorizes its imposition so that its legality is beyond question.

To resolve the seeming conflict, the Court crafted two conditions before an employee may be entitled to back salaries: a) the employee must be found innocent of the charges **and** b) his suspension must be unjustified.<sup>[17]</sup> The reasoning behind these conditions runs this way: although an employee is considered under preventive suspension during the pendency of a successful appeal, the law itself only authorizes preventive suspension for a fixed period; hence, his suspension beyond this fixed period is unjustified and must be compensated.

The CSC's rigid and mechanical application of these two conditions may have resulted from a misreading of our rulings on the matter; hence, a look at our jurisprudence appears in order.

### ***Basis for award of back salaries***

The Court had the occasion to rule on the issue of entitlement to back salaries as early as 1941,<sup>[18]</sup> when Section 260 of the Revised Administrative Code of 1917 (RAC)<sup>[19]</sup> was the governing law. The Court held that a government employee, who was suspended from work pending final action on his administrative case, is not entitled to back salaries where he was ultimately removed due to the valid appointment of his successor. No exoneration or reinstatement, of course, was

directly involved in this case; thus, the question of back salaries after exoneration and reinstatement did not directly arise. The Court, however, made the general statement that:

**As a general proposition, a public official is not entitled to any compensation if he has not rendered any service, and the justification for the payment of salary during the period of suspension is that the suspension was unjustified or that the official was innocent.** Hence, the requirement that, to entitle to payment of salary during suspension, there must be either reinstatement of the suspended person or exoneration if death should render reinstatement impossible.<sup>[20]</sup> (emphasis and underscoring ours)

In *Austria v. Auditor General*,<sup>[21]</sup> a high school principal, who was penalized with demotion, claimed payment of back salaries from the time of his suspension until his appointment to the lower position to which he was demoted. He argued that his later appointment even if only to a lower position of classroom teacher amounted to a reinstatement under Section 260 of the RAC. The Court denied his claim, explaining that the reinstatement under Section 260 of the RAC refers to the same position from which the subordinate officer or employee was suspended and, therefore, does not include demotional appointments. The word "reinstatement" was apparently equated to exoneration.

In the 1961 case of *Gonzales v. Hon. Hernandez, etc. and Fojas*<sup>[22]</sup> interpreting the same provision, the Court first laid down the requisites for entitlement to back salaries. Said the Court:

A perusal of the decisions of this Court<sup>[23]</sup> x x x show[s] that **back salaries are ordered paid to an officer or an employee only if he is exonerated of the charge against him and his suspension or dismissal is found and declared to be illegal.** In the case at bar, [the employee] was not completely exonerated, because although the decision of the Commissioner of Civil Service [ordering separation from service] was modified and [the employee] was allowed to be reinstated, the decision [imposed upon the employee the penalty of two months suspension without pay]. [emphasis and underscoring ours]

Obviously, no exoneration actually resulted and no back salary was due; the liability for the offense charged remained, but a lesser penalty was imposed.

In *Villamor, et al. v. Hon. Lacson, et al.*,<sup>[24]</sup> the City Mayor ordered the dismissal from the service of city employees after finding them guilty as charged. On appeal, however, the decision was modified by considering "the suspension of over one year x x x, already suffered x x x [to be] sufficient punishment"<sup>[25]</sup> and by ordering their immediate reinstatement to the service. The employees thereupon claimed that under Section 695 of the RAC, the punishment of suspension without pay cannot exceed two (2) months. Since the period they were not allowed to work until their reinstatement exceeded two months, they should be entitled to back salaries corresponding to the period in excess of two months. In denying the employees' claim for back salaries, the Court held: