

EN BANC

[A.M. No. P-99-1316, August 31, 2001]

KENNETH S. NEELAND, COMPLAINANT, VS. ILDEFONSO M. VILLANUEVA, JR., CLERK OF COURT AND EX-OFFICIO PROVINCIAL SHERIFF, BACOLOD CITY, AND NELSON N. ABORDAJE, SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, BR. 4, BACOLOD CITY, RESPONDENT.

RESOLUTION

BELLOSILLO, J.:

This resolves the prayer of respondent Ildefonso M. Villanueva, Jr., to be paid his "back wages and other economic benefits from the time of my 'dismissal' in November 1989 to my reinstatement x x x" contained in his letter addressed to the Honorable Chief Justice Hilario G. Davide, Jr. dated 22 August 2000.

Our first task is to ensure that justice is done to our selfless workers in our own turf - for an efficient and wholesome administration of justice. For, without the massive support and dedicated service of our more than twenty-five thousand men and women in the judiciary who toil day in and day out, even at night when necessary, the swift delivery of justice to our countrymen who thirst for immediate and dynamic response^[1] cannot be realized.

We are presented in this case the golden opportunity to transform our lavish praises and promises into an inspiring and meaningful action. It would be beyond just doing charity at home or promulgating a hometown decision; rather, at the core lies the option, to paraphrase then U.S. Chief Justice John Edwin Marshall, to do complete justice or justice by halves.

Modifying our Resolution of 29 October 1999 dismissing respondent Clerk of Court and *Ex-officio* Provincial Sheriff Villanueva, Jr., from the service, our subsequent Resolution of 8 August 2000 only found him liable to pay a fine. While appreciative in the name of fairness that the penalty of dismissal from service has been discarded, complete justice, and not justice by halves, dictates that he be penalized only with the appropriate sanction. For, to deny him the back salaries and other economic benefits for the period he was forced out of work by our 29 October 1999 Resolution dismissing him from the service would be to re-validate this egregious penalty that we have since reversed, and effectively impose upon him another penalty - now estimated to be P300,000.00 more or less - in addition to the singular sentence of fine that he has to suffer.

We bear in mind that respondent Villanueva, Jr., was forced by us out of his job - without leaving him any choice - even before he could file a motion for reconsideration. It is unfair that other civil service employees are given the benefit of stay of execution of penalties involving dismissal from work, or even mere

suspension, and how we have several times affirmed such stay of execution to be a matter of due process. Yet, for our own employees whom we pay tribute during anniversaries to show our profound gratefulness we have been truly unkind in immediately effecting their dismissal from work, and worse, of unwittingly punishing them with more by depriving them of their back salaries and other economic benefits, even after they have been found liable only for acts that warrant the imposition of a mere fine.

This case in sum boils down to an appeal to our sense of fairness and will to render justice - "complete justice and not justice in halves." This is an attribute of our "genuflection to a century of judicial devotion." Let us go beyond lip service and, for the record, place the taxpayers' money where justice ought to be served. It is here where we can find the firm resolve to keep the judicial torch alive.

We rewind to better grasp the facts: On 16 December 1996 Kenneth S. Neeland filed with the Office of the Chief Justice a complaint against Atty. Ildefonso M. Villanueva, Jr., Clerk of Court and Ex-Officio Provincial Sheriff of the Regional Trial Court of Bacolod City, and Nelson N. Abordaje, Sheriff III of the Municipal Trial Court in Cities, Branch 4, Bacolod City, for gross misconduct.

The complaint arose from the foreclosure of a chattel mortgage on a Toyota sedan owned by the mortgagor, Kenneth S. Neeland, to satisfy an obligation of P20,000.00 to the mortgagee, Sugarland Motor Sales.

A year before, or on 8 December 1995, Sugarland Motor Sales filed with the City Sheriff, Bacolod City, a request for foreclosure of the chattel mortgage constituted on the mortgaged vehicle of Kenneth S. Neeland, and its sale at public auction to satisfy his obligation to Sugarland Motor Sales. Acting upon the request, City Sheriff Nelson Abordaje seized the motor vehicle and issued a notice of auction sale for 6 February 1996 at the Daewoo Cars compound, Lacson Street, Bacolod City. Accordingly, on the scheduled date, respondent Abordaje proceeded to conduct the auction sale. The seized vehicle was sold to the highest bidder, Sugarland Motor Sales, for P40,000.00. Sheriff Abordaje did not, however, turn over to Kenneth Neeland the remaining balance between the sum at which the vehicle was sold and the obligation sought to be satisfied plus expenses of sale amounting to P20,000.00. On the date of the sale, Clerk of Court Ildefonso M. Villanueva, Jr., as ex-officio Provincial Sheriff, issued a certificate of sale conveying the motor vehicle to Sugarland Motor Sales. Mortgagor Neeland was not present during the auction sale.

The investigating judge, Executive Judge Anastacio I. Lobaton, in his Report dated 21 April 1998, found that the auction sale was conducted in accordance with the prescribed rules and regulations, and "respondent Abordaje was duty bound to demand and collect from the highest bidder, the mortgagee, the aforesaid difference amounting to P20,000.00 and deposit the same to (sic) the Office of the Clerk of Court for safekeeping since the mortgagor was not around to claim it. When the highest bidder failed to turn over the said difference, it would have been wise and proper for respondent Abordaje to have rendered a report on the matter to his superior, respondent Villanueva, Jr." Nonetheless, the Executive Judge held that respondent Villanueva, Jr. was liable for the negligence of his subordinate in failing to turn over the balance of the proceeds of the auction sale to the mortgagor. Consequently, he recommended that respondents be reprimanded with warning.

The matter was thereafter referred to the Court Administrator for evaluation, report and recommendation. In his Memorandum dated 11 May 1999, Court Administrator Alfredo L. Benipayo sustained the investigating judge and declared that the chattel mortgage was validly foreclosed, absent any convincing proof of forgery. The Court Administrator agreed with the findings of the investigating judge that both respondents were liable for not demanding from the highest bidder, Sugarland Motor Sales, the difference between the bid price and the obligation of complainant in the amount of P20,000.00, further holding that such omission did not amount to gross misconduct.

Unfortunately, we disagreed with the recommendation of the Executive Judge and the Court Administrator. Instead, we found Sheriff Abordaje's failure to turn over to Kenneth Neeland the excess of the bid price as amounting to gross misconduct prejudicial to the best interest of the service. Thus we ruled that "the officer who conducted the foreclosure must demand and actually receive the cash proceeds of the auction sale from the highest bidder and turn over the balance to the mortgagor. It was, therefore, irregular for the sheriff not to demand and receive the entire bid price in cash from the winning bidder, or at the very least, to demand the excess amount and turn it over to the mortgagor." As regards Clerk of Court Villanueva, Jr., we stated, "[n]either can respondent Villanueva, Jr., escape responsibility for his failure to supervise Sheriff Abordaje in the performance of the latter's duties. Clerk of Court Villanueva Jr. issued a certificate of sale without ascertaining that the balance of P20,000.00 due from winning bidder Sugarland Motor Sales was duly turned over and accounted to the mortgagor. Respondent Villanueva, Jr., a lawyer occupying a position of responsibility, must be alert at all times to an honest conduct of foreclosures of chattel mortgages." Both were thus found to be guilty of gross misconduct in the performance of their duties and meted the penalty of "DISMISSAL from the service, with forfeiture of all leave credits and retirement benefits, if any, and with prejudice to re-instatement or re-employment in any agency, branch or instrumentality of the government, including government-owned and controlled corporations." This Resolution dismissing respondents was immediately enforced, and so they were barred from working even before they could move for a reconsideration.

We relented to the motion for reconsideration of respondent Villanueva, Jr., upon our finding that "[a]fter a review of the records, we note that this is the first administrative complaint against respondent in his long years of service with the judiciary. He has also introduced various innovations in court to increase the efficiency of the employees." The offense was accordingly downgraded to simple neglect of duty, and he was sentenced to pay a FINE of P5,000.00 with a warning that a repetition of the same or similar offense would be dealt with more severely. Notwithstanding this disposition of the motion for reconsideration, we nevertheless sustained our finding that Clerk of Court Villanueva, Jr., was remiss in his duties as *ex-officio* provincial sheriff for failing to oversee the rightful turnover to the mortgagor of the balance of the proceeds of the auction sale to the mortgagor.

Respondent Clerk of Court now asks for back salaries and other economic benefits withheld from him from the time of his dismissal up to his reinstatement. The Financial Management Service (FMS) objected to the demand, opining that the demand for payment of back salaries had no legal basis on the principle of "no work, no pay." Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative

Officer of this Court, agreed with the recommendation of the FMS that Clerk of Court Villanueva, Jr. should not be paid back salaries and other economic benefits since he was not completely exonerated of the accusation against him; on the contrary, was found guilty of neglect of duty.

There are two (2) items that must be stressed to grant respondent Clerk of Court his prayer for the payment of his back salaries and other economic benefits:

First, even under the extant rule on the matter, he is clearly entitled to such demand. For one, the immediate execution of the order of dismissal was premature. There being no rule to the contrary, he was entitled to file a motion for reconsideration, and corollarily, the suspension of the enforcement of the order of dismissal pending resolution of his motion. For another, the physical impossibility of effecting reinstatement for the period of employment that was long gone by reasons not attributable to him entitles him to restitution in the form of back salaries and other economic benefits. For, otherwise, he would find himself unfortunately punished twice for an offense that is properly and singularly penalized only by a fine.

Second, the grant of back salaries and other economic benefits hews well to an employee's aspirations for *moral justice*; precisely, recourse may be had to our corrective powers to avoid a right granted in law from being rendered illusory in fact. For, how could we account for the additional penalty when we ourselves declared that the proper penalty under the circumstances was only a fine? For sure, we can hark back to the presumptive validity of our earlier Resolution dismissing respondent Clerk of Court, but this presumption does not hold true when we are not being taken to task for the Resolution that we made but simply being asked to restore what in the first place was due him. The demand is plainly honestly and firmly one of justice.

Our Resolution dismissing respondent Villanueva, Jr. from the service for gross misconduct was not justified. He did not commit any act that would constitute misconduct. He was nonetheless found guilty of simple neglect of duty (of which he was not even charged!) for which he was fined P5,000.00.

With emphasis on the law, the present case clearly falls under a situation of unjustified dismissal from work, which lays the basis for the claim for back salaries and other economic benefits. Our Resolution dated 29 October 1999 dismissing respondent Villanueva, Jr., from the service was immediately enforced despite his right to file a motion for reconsideration. We erroneously treated him like a judge who was immediately thrown out of his seat as soon as he was declared guilty of gross misconduct to prevent him from committing more injustices in the bench and "bastardizing the judiciary." But respondent Villanueva, Jr., is not a judge but a mere Clerk of Court and *Ex-officio* Provincial Sheriff. We emphasize that the existence of such right defeats any authority to pursue immediate execution of the Resolution. Under case law, to which we arduously adhere, his dismissal from the service pending his motion for reconsideration requires the payment of back salaries and other economic benefits to compensate for such unjust action. In *Abellera v. City of Baguio*,^[2] this Court held -

The rule on payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in this jurisdiction. **Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, RA 2260), but also when the suspension is unjustified.**

In the present case, upon receipt of the decision of the Civil Service Commissioner finding petitioner-appellant guilty, but even before the period to appeal had expired, respondents dismissed the latter from the service and another one was appointed to replace him. **The separation of petitioner before the decision of the Civil Service Commissioner had become final was evidently premature. Respondents should have realized that the employee still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period and the possibility of that decision being reversed or modified.** As it did happen on such appeal by the petitioner, the penalty imposed by the Commissioner was reduced by the reviewing Board to only 2 months suspension. And yet, by respondents' action, petitioner was deprived of work for more than 2 years. **Clearly, Abellera's second suspension from office, from July 10, 1961 to November 10, 1963, was unjustified, and the payment of the salaries corresponding to said period is, consequently, proper.** Otherwise, Abellera would, in effect, suffer a suspension longer than that meted him by the Civil Service Board of Appeals (*emphasis supplied*).

The same ruling was rendered in *Tan v. Gimenez*^[3] -

The appeal taken by the petitioner to the Civil Service Board of Appeals from the decision of the Commissioner of Civil Service finding him guilty of grave misconduct and requiring him to resign from the service with prejudice to reinstatement precluded the execution of the decision of the Commissioner of Civil Service. **In other words, the decision did not become final and executory. The decision of the Civil Service Board of Appeals reversing that of the Commissioner of Civil Service and absolving the petitioner from the charge was not reversed or modified by the President. It, therefore, became the final decision on the petitioner's case. Consequently, the petitioner's removal from office was not in accordance with law; his reinstatement became a ministerial duty of the proper authority; and the payment of back salary was merely incidental to reinstatement** (*emphasis supplied*).

Execution of decisions takes place only when they become final and executory, and a judgment becomes "final and executory" by operation of law.^[4] Execution of decisions before such stage is not allowed unless specifically permitted by statute.^[5] Thus, in quasi-judicial agencies, "[w]here the legislature has seen fit to declare that