

EN BANC

[G.R. No. 130685, March 21, 2000]

FELIX UY, ROMAN CAGATIN, JAMES ENGUITO, EMMIE HURBODA FRANCISCO OLAER, LEONCIO BUSTAMANTE, FRANCISCO RANARIO, JOE OSIN, JORGE PEDIDA, JOSE BATISTING, LUCIO BATISTING, SEGUNDINO BOLOTAOLO, HEIRS OF DEMOCRITO RANARIO REPRESENTED BY FRANCISCO RANARIO, HEIRS OF LOPE NAKILA, BONIFACIO BUSCAGAN, MARIANO CAPA, JUAN MORALES, GODOFREDO RACHO, ELIZABETH AMARILLO, BENIGNO ACAMPADO, PEDRO AREGLO, SERVITO BATAO, ELEODORO BATISTING, ROGELIO DE CLARO, SILFORO LIBANDO, HILARIO MARINAS, ALEJANDRO NOJA, HEIRS OF PEDRITA OLAER REPRESENTED BY SURVIVING SPOUSE FRANCISCO OLAER, HEIRS OF SILFORO MORALES REPRESENTED BY EVANGELINA MORALES, ANTONIO RETUERTO, STELLA FILIPINAS, TEODOLO FILIPINAS, HEIRS OF MANSUETO NATAD REPRESENTED BY NATIVIDAD NATAD, AMADO MAGSIGAY, TIMOTEO GOLORAN, GREGORIO SEQUILLA, HEIRS OF ANTONIO CANOY, APOLINARIO PLAZA, JESUS GUELASAO, HEIRS OF APOLONIO ANTIPASADO, TERESO CAGADAS, LUCIO BARONG, LEONARDO LAPIZ, FRANCISCO PAIGAN, ARTURO ESCOBIDO, BONIFACIO BUNOL, HEIRS OF FRANCISCO PATAYAN REPRESENTED BY NORMA PATAYAN, SALVADOR CENA, BASILIO PAJE, DOMINADOR DAGONDON, FAUSTINO LASTIMADO, EMPERATRIZ MORAN, EUGENIO MIRA, ANGELO PLAZA, DEMETRIA ABAY-ABAY, ROLANDO GASCON, DOROTEO GASCON, RIZALINO CUBILLAS, HEIRS OF FAUSTINO MAGLAHUS REPRESENTED BY LUISA MAGLAHUS, AND JOEL PLAZA, PETITIONERS, VS. COMMISSION ON AUDIT, REPRESENTED BY ITS CHAIRMAN, CELSO D. GANGAN AND BY ITS COMMISSIONERS, SOFRONIO B. URSAL AND RAUL C. FLORES, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Petitioners were among the more than sixty permanent employees of the Provincial Engineering Office, Province of Agusan del Sur, who were dismissed from the service by then Governor Ceferino S. Paredes, Jr. when the latter assumed office, allegedly to scale down the operations of the said office.^[1] On July 11, 1988, a petition for reinstatement was filed by petitioners before the Merit Systems Protection Board (MSPB), docketed as MSPB Case No. 91-1739, alleging that Governor Paredes was motivated by political vengeance when he dismissed them and hired new employees to replace them. It appears that during the pendency of the petition for reinstatement, Governor Paredes issued Memorandum Order No. 3-A dated March

20, 1989 providing for the hiring of casual employees to replace the dismissed employees, allegedly due to exigency of service.

The MSPB required Governor Paredes to comment on the petition. On February 1, 1989, the governor specifically denied the allegations of petitioners that their dismissal was illegal. Subsequently, an amended petition and an amended answer were filed by the parties. Hearings were conducted by the Civil Service Regional Office No. X, Cagayan de Oro City, where both parties were represented by their respective counsels. The last hearing was held on June 29, 1990, after which the parties submitted their respective memorandum together with their evidence.

On January 29, 1993, the MSPB rendered a decision holding that the reduction in work force was not done in accordance with civil service rules and regulations, and ordering the reinstatement of petitioners.^[2] The pertinent portions of said decision state, viz:

"The focal point of controversy is whether or not Administrative Order No. 88-01 streamlining the personnel complement of the PEO is in accordance with Civil Service Laws, Rules and Regulations.

The law applicable in the case at bar, which is hereby quoted as follows are Section 29 of E.O. 292 and Section 14 of the Rules on Personnel Actions and Policies, thus:

'Sec. 29. Reduction in Force. - Whenever it becomes necessary for lack of work or funds or due to change in the scope or nature of an agency's program or as a result of reorganization, to reduce the staff of any department or agency, those in the same group or class of positions in one or more agencies within the particular department or agency wherein the reduction is to be effected, shall be reasonably compared in terms of relative fitness, efficiency and length of service, and those found to be least qualified for the remaining position shall be laid off. (underlining supplied).

Sec. 14. The names of permanent employees laid off shall be entered in a reemployment list for the appropriate occupation. The list, arranged in the order of the employees' retention credit, shall be kept by the Department or agency where the reduction took place, and a copy thereof shall be furnished the Commission. The Commission shall certify for purposes of reemployment from such list as the opportunity for reemployment arises.'

It has been conceded that reduction in force due to lack of funds is a valid ground for terminating the services of an employee. But this, of course, is subject to some limitations.

While the Governor of the Province of Agusan del Sur may take measures

to retrench or reduce the work force yet this must be done in accordance with law and rules. As the plantilla schedule for the period of January to December 1988 would show, there are 106 employees in the provincial Engineering Office and out of these, 53 employees were terminated. There is no showing that these employees were compared in terms of relative fitness, efficiency and length of service. Thus, there is no basis in removing these employees except for the reason of lack of funds.

The manifest repugnance of the action taken by Governor Paredes, Jr. was further exacerbated by the issuance of the highly questionable Memorandum Order No. 3-A s. 1989 dated March 20, 1989. Said memorandum provides for the hiring of casuals under the façade of exigency of the public service. It was also a blatant violation of Section 14 of the Rules on Personnel Actions and Policies which succinctly states that the names of permanent employees laid off shall be entered in a reemployment list for the appropriate occupation. The list, arranged in the order of the employees' retention credit, shall be kept by the Department or agency where the reduction took place and copy thereof shall be furnished the Commission. They shall certify for purposes of reemployment from such list as the opportunity for reemployment arises.

x x x.....x x x.....x x x."

Pursuant to a Motion for Clarification filed by petitioners, the MSPB issued an Order dated April 19, 1993 which directed the Provincial Government of Agusan del Sur pay petitioners their back salaries and other money benefits for the period that they had been out of the service until their reinstatement.^[3] In another motion dated May 24, 1993, petitioners sought an order directing the Provincial Government of Agusan del Sur to reinstate them and declare as invalid the appointments of those who replaced them. On June 24, 1993, the Provincial Governor of Agusan del Sur was ordered to reinstate the dismissed employees.^[4] The Governor continued to refuse to implement the order to reinstate. Another motion was filed by petitioners and hence, an Order was issued by the MSPB on October 8, 1993, directing the Governor to show cause why he should not be declared in contempt. The matter was thereafter brought before the Civil Service Commission (CSC) which issued an Order dated December 14, 1993 directing the Governor to reinstate the employees with the caveat that should he fail to do so, the CSC would be constrained to initiate contempt proceedings against him and other responsible officials.^[5] As per its Resolution No. 94-1567 dated March 21, 1994, the CSC actually initiated indirect contempt proceedings against the Provincial Governor who was by then Democrito Plaza.^[6] This prompted Governor Plaza to comply, and herein petitioners were finally reinstated to their former positions.

The difficulties of petitioners did not end, for on July 9, 1994, the Provincial Administrator, for and in behalf of Governor Plaza, wrote a letter^[7] to respondent COA through the Provincial Auditor, inquiring on whether or not:

"1. The MSPB Civil Service Commission decision directing the incumbent Provincial Governor, Agusan del Sur to pay back salaries and other

benefits of the reinstated sixty one (61) PEO employees, illegally dismissed by the former Provincial Governor Ceferino S. Paredes Jr., is final and executory;

2. The Commission on Audit is the only proper authority to determine disbursement of such is in order;

3. The former Provincial Governor Ceferino S. Paredes, Jr., who perpetrated the illegal act of dismissing the 61 PEO employees, would be personally liable for payment of back salaries and other benefits."

In the meantime, the Provincial Treasurer of Agusan del Sur made a partial payment to the reinstated employees on December 12, 1995, representing back salaries in the amount of P2,291,423.34.^[8]

On July 2, 1996, respondent COA rendered its Decision No. 96-351^[9] holding as follows:

"As regards the first issue, suffice it to state that the order of payment of the back salaries and other benefits due the petitioners has become final and executory there being no appeal filed by the Provincial Government of Agusan del Sur within the reglementary period.

Anent the issue on jurisdiction, the Supreme Court had occasion to rule in the case of Department of Agriculture vs. National Labor Relations Commission x x x, thus:

'Pursuant, however to C.A. No. 327, as amended by PD No. 1445, the money claim should first be brought to the Commission on Audit.'

The focal point of controversy in the case at bar is the issue as to whether or not subject claim for back salaries and other monetary benefits may be allowed in audit.

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 x x x.

The Civil Service Commission, in Resolution No. 91-1739 dated January 29, 1993 ruled that there was illegal termination due to failure to comply with the provisions of Section 29 of Executive Order No. 292. The said Section 29, supra, provides that in case of reduction of force, those of the same group of positions shall be reasonably compared in terms of relative fitness, efficiency and length of service. As a consequence of the illegal termination of herein claimants, the Civil Service Commission ordered their reinstatement. It is a settled rule that when a government official has been illegally suspended or dismissed, and his reinstatement

had been ordered, for all intents and purposes, he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held x x x.

Premises considered, This Commission sees no further legal impediment to the payment of the claims of Ms. Emmie Hurboda et al., of the Provincial Engineering Office, Province of Agusan del Sur, for back salaries and other monetary benefits in the total amount of P3,322,896.06 which has become the personal liability of former Governor Paredes, it appearing that the illegal dismissal was done in bad faith as clearly shown in the herein records."

As a result, the Provincial Government of Agusan del Sur, through its Acting Provincial Treasurer, refused to release petitioners' remaining back salaries and other monetary benefits. A motion for reconsideration filed by petitioners was denied by respondent COA in its Decision No. 97-497 dated August 28, 1997.^[10]

In this special civil action for *certiorari*, petitioners raise the following assignment of errors:

"(A).....The Honorable Commission on Audit committed grave abuse of discretion tantamount to lack of jurisdiction when it promulgated Decision No. 97-497 on August 28, 1997 denying their motion for reconsideration and affirming its Decision No. 96-351, dated July 2, 1996 by ruling that payment of their back salaries and other money benefits became the personal liability of former Governor Ceferino Paredes Jr. and not of the Provincial Government of Agusan del Sur, after the Merit Systems Protection Board and the Civil Service Commission declared its decisions final and executory;

(B).....The Honorable Commission on Audit has no appellate authority to revise, amend and modify the final and partially executed decisions/orders of the Merit Systems Protection Board and the Civil Service Commission, being the same constitutional commission and co-equal with each other;

(C).....The decisions of the Merit Systems Protection Board and the Civil Service Commission have already been partially executed by the local government unit of the Province of Agusan del Sur by reinstating petitioners to their former positions in 1993 and partially paying their back wages in the amount of Two Million Two Hundred Ninety One Four Hundred Twenty Three and Thirty Four (P2,291,423.34) Pesos on December 12, 1995; and

(D).....The jurisprudence cited by public respondent in the case of Dumlao vs. CA, 114 SCRA 251; Salcedo vs. CA, 81 SCRA 408; and Correa vs. CFI of Bulacan, 92 SCRA 312 are not applicable in this case."

The **hinge issue** is whether respondent COA, in the exercise of its power to audit,