

THIRD DIVISION

[G.R. No. 188681, March 08, 2017]

**FRANCISCO T. BACULI, PETITIONER, V. OFFICE OF THE
PRESIDENT, RESPONDENT.**

[G.R. No. 201130, March 8, 2017]

**THE SECRETARY OF AGRARIAN REFORM, AND THE REGIONAL
DIRECTOR OF AGRARIAN REFORM, REGION 2, PETITIONERS, V.
FRANCISCO T. BACULI, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

The law abhors the indefinite preventive suspension of public officials and employees, whether they are presidential appointees or not. For presidential appointees, the suspension should last only within a reasonable time. For non-presidential appointees, the maximum period of preventive suspension is 90 days. Once the allowable period of preventive suspension had been served, the public officials and employees must be automatically reinstated.

The Case

Under consideration are the consolidated appeals docketed as G.R. No. 188681 and G.R. No. 201130. The appeals relate to the right of a public officer who had been invalidly dismissed from the service to recover his salaries, benefits and other emoluments corresponding to the period beyond the period of his preventive suspension pending investigation until the time of his valid dismissal from the service.

G.R. No. 188681 is the appeal of petitioner Francisco T. Baculi assailing the decision promulgated on October 29, 2008,^[1] whereby the Court of Appeals (CA) upheld in CA-G.R. SP No. 82629 the decision of the Office of the President dismissing him from the service.

On the other hand, G.R. No. 201130 is the appeal of the Secretary of Agrarian Reform and the Regional Director of Agrarian Reform for Region 2 assailing the decision promulgated on June 16, 2011,^[2] whereby the CA, in CA-G.R. SP No. 115934, reversed and set aside the decision of the Regional Trial Court (RTC), Branch 3, in Tuguegarao City granting Baculi's petition for *mandamus* brought to compel the payment of his salaries, benefits and other emoluments corresponding to the period following the lapse of his preventive suspension.

Antecedents

The factual and procedural antecedents relevant to G.R. No. 188681 are rendered by the CA in the assailed decision promulgated in CA-G.R. SP No. 82629, as follows:

On July 16, 1988, the petitioner was appointed as Provincial Agrarian Reform Officer (PARO) II of the Department of Agrarian Reform (DAR)-Cagayan by then President Corazon C. Aquino. In 1991, acting in his capacity as PARO II, he entered into several contracts with various suppliers for the lease of typewriters, computers, computer printers, and other accessories. Separate reports from the DAR Commission on Audit and the DAR Regional Investigating Committee of Cagayan, however, revealed that the foregoing transactions were tainted with irregularities. Both bodies found that the petitioner entered into contracts beyond the scope of his signing or approving authority, which was up to P50,000.00, as provided in DAR General Memorandum Order No. 4, Series of 1990; that he executed and approved contracts of lease without the corresponding Certificate of Availability of Funds as provided in Section 86 of Presidential Decree No. 1445, otherwise known as the Auditing Code of the Philippines; and that there was no public bidding held for the purpose in violation of the Commission on Audit Circular No. 85-55-A. Based on the said reports, then DAR Secretary Ernesto D. Garilao, finding the existence of *prima facie* case, issued on September 4, 1992 a formal charge against the petitioner for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. Simultaneous to the charge, the petitioner was placed under preventive suspension for ninety (90) days pending the investigation of the complaint. He was also required to submit his answer in writing and to state therein whether or not he elects a formal investigation.

On October 25, 1992, through counsel, the petitioner submitted his Answer with Prayer to Dismiss Charges and to Lift Preventive Suspension, alleging in his defense that he acted purely for the benefit of the DAR Provincial Office. In support of his prayer for dismissal of the complaint, he alleged that the formal charge issued by Secretary Garilao was null and void because it was based on the report of the DAR Regional Investigating Committee, a body bereft of authority to investigate administrative complaints against presidential appointees like him pursuant to DAR Memorandum Order No. 5, Series of 1990.

Thereafter, acting on the formal charge, the DAR Legal Affairs Office conducted a formal investigation on November 16, 17, and 18, 1992. On May 17, 1994, then DAR Assistant Secretary for Legal Affairs Hector D. Soliman issued an order dismissing the petitioner from the service. Secretary Garilao affirmed the said order on August 2, 1994.

The petitioner then appealed to the Civil Service Commission (CSC). Seeing no reversible error, CSC affirmed the dismissal of the petitioner. He filed a motion for reconsideration but the CSC refused to reconsider its previous resolution.

Unsatisfied, he found his way to this Court through a petition for review. His effort was not put to naught when this Court, in its decision promulgated on August 31, 2000, set aside the order of dismissal of Secretary Garilao and ruled that the former is bereft of disciplinary jurisdiction over presidential appointees. Hence, his order to remove the petitioner was a total nullity. In the same fashion, the resolutions of the CSC affirming such order were likewise held null and void. The DAR

Secretary, however, was given the prerogative to forward his findings and recommendations to the Office of the President for a more appropriate action. The dispositive portion of the said decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, this petition is hereby **GRANTED**. CSC Resolution Nos. 981412 dated June 9, 1998 and 982476 dated September 23, 1998 are **ANNULLED** and **SET ASIDE**. The Secretary of Agrarian Reform may, however, forward his findings and recommendations to the Office of the President. No pronouncement as to costs.

SO ORDERED.

On the strength of the foregoing decision, the petitioner, through a letter dated January 9, 2001, requested from then DAR Secretary Horacio Morales to issue an order of reinstatement in his favor. But, as thus appear on record, he failed to be formally reinstated. Meanwhile, in line with this Court's decision, succeeding DAR Secretary Hernani A. Braganza forwarded his findings and his recommendation to dismiss the petitioner from the service, as well as records of the case, to the Office of the President for proper disposition through a memorandum dated July 4, 2002.

Acting on the said memorandum, then Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, acting by authority of the President, issued the assailed order, the dispositive portion of which reads:

WHEREFORE, premises considered, and as recommended by the DAR, Francisco T. Baculi is hereby dismissed from the service, with all its accessory penalties of forfeiture of financial benefits, including disqualification from entering government service. Accordingly, the request for reinstatement is hereby **DENIED**.

SO ORDERED.^[3]

The factual and procedural antecedents relevant to G.R. No. 201130 take off from where the foregoing antecedents end. The CA summed up such antecedents in its decision in CA-G.R. SP No. 115934, to wit:

Armed with the decision of the Court of Appeals [promulgated on August 31, 2000], petitioner demanded from the DAR Secretary that he be reinstated. According to the petitioner, he was not reinstated. But in the decision of the court *a quo* which the petitioner did not refute, it is stated therein that "*petitioner reported for work at the DAR Regional Office No. 2 on March 12, 2001 until December 31, 2001 during which period, his salary and other emoluments and benefits were paid in full*".

The DAR Secretary forwarded his findings and recommendations to the Office of the President on July 4, 2002. On **June 26, 2003**, the Office of the President in its Order in OP Case No. 03-11-488, dismissed petitioner from the service. For reference, the dismissal order of the Office of the President is being referred to by petitioner as his "second dismissal".

Petitioner appealed the order of dismissal of the Office of the President to the Court of Appeals docketed as CA-G.R. SP No. 82629. For failure of petitioner to attach a copy of CA-G.R. SP No. 82629, this Court secured a copy of the Court's decision from the Record's Division and it appears that this Court, through the 13th Division, promulgated a decision on October 29, 2008, wherein it DISMISSED the petition filed by the petitioner. According to the petitioner, the second dismissal order is now before the Supreme Court awaiting resolution.

Persistent that his monetary claim be given to him, petitioner sought recourse before the court *a quo* for *Mandamus* to compel the DAR Secretary to pay his basic salaries, other emoluments and benefits with legal rate of interest, covering the periods of August 2, 1994, when the DAR Secretary dismissed him from service, to June 25, 2003, a day before the Office of the President rendered its decision declaring him dismissed from the service.

Finding that petitioner is not entitled to the relief prayed for, the court *a quo* rendered its judgment on May 27, 2010, declaring that:

WHEREFORE, premises considered, the petition is dismissed.

No pronouncement as to cost.^[4]

Issues

Although the CA had ruled in favor of Baculi in CA-G.R. SP No. 49656 to the effect that the resolutions issued by the Civil Service Commission (CSC) affirming his dismissal were void on the ground that the DAR Secretary had been bereft of disciplinary jurisdiction over him as a presidential appointee,^[5] the CA upheld his dismissal pursuant to the order of the Office of the President^[6] in CA-G.R. SP No. 82629.^[7]

As a consequence of the dismissal of Baculi by the Office of the President, the CA reversed the dismissal by the RTC of his petition for mandamus and instead decreed in its decision promulgated on June 16, 2011 in CA-G.R. SP No. 115934,^[8] as follows:

WHEREFORE, the *Mandamus on Appeal* is hereby **GRANTED**. The decision appealed from is **REVERSED** and **SET ASIDE**. Petitioner **FRANCISCO T. BACULI** is granted the back salaries and other benefits owing his position at the rate last received before the suspension was imposed from September 4, 1992 to June 25, 2003, except the 90-day period of suspension and the period from March 12, 2001 to December 31, 2001, wherein petitioner was briefly reinstated.

SO ORDERED.^[9]

It is significant to observe at this juncture that Baculi had not impugned his preventive suspension pending investigation upon the filing of the formal charges against him for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. His challenge had been focused on his first dismissal by DAR Secretary Garilao, and his non-reinstatement upon the end of his preventive suspension on December 3, 1992.

As we see it, the issue submitted in G.R. No. 188681 is whether or not the order of dismissal issued by the Acting Deputy Executive Secretary for Legal Affairs was valid; while the issues in G.R. No. 201130 are: (1) whether or not the CA erred in reversing the findings of the RTC, and in granting the petition for *mandamus*; and (2) whether or not the pendency of the case questioning the legality of the order of dismissal posed a prejudicial question.

Ruling of the Court

We deny the petitions for review on *certiorari*, and affirm the assailed decisions of the CA promulgated in CA-G.R. SP No. 82629 and CA-G.R. SP No. 115934.

1.

The first dismissal of Baculi was void

DAR Secretary Ernesto D. Garilao brought charges against Baculi for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service based on the reports issued by the Regional Investigating Committee of the DAR (DAR-RIC) and the Commission on Audit (COA) about his having violated Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) as well as relevant DAR rules and regulations. He was immediately placed under preventive suspension for 90 days (*i.e.*, from September 4 to December 3, 1992) as a consequence.

Eventually, DAR Secretary Garilao dismissed Baculi from the service based on the findings and recommendations of Assistant Secretary Hector Soliman of the DAR Legal Affairs Office.

The CSC affirmed the dismissal of Baculi with modification. It anchored its affirmance on the vesting of disciplinary jurisdiction in the Department Secretaries, among others, as provided in Section 47(2), Chapter 7, of Book V of the *Administrative Code of 1987, viz.:*

Section 47. Disciplinary Jurisdiction. –

x x x x

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.

x x x x

The foregoing provision seemingly vested the DAR Secretary with the authority to investigate and decide matters involving disciplinary actions because Baculi, then a Provincial Agrarian Reform Officer II, was under his administrative supervision and control. This is based on Section 6 and Section 7(5), Chapter 2, Book IV of the *Administrative Code of 1987*, to wit:

Section 6. *Authority and Responsibility of the Secretary.* — The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.