

EN BANC

[G.R. No. 178256, July 23, 2008]

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, PETITIONER, VS. ROLANDO S. CRUZ, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] dated June 23, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 80353 and the CA Resolution^[2] dated June 4, 2007 which denied petitioner's Motion for Reconsideration.

The material antecedents that spawned the present controversy are the same with *Mamaril v. Civil Service Commission*.^[3] Thus, the Court adopts and quotes the facts therein stated:

On December 19, 2000, then [Department of Transportation and Communications (DOTC)] Secretary Vicente C. Rivera, Jr. requested the Civil Service Commission (CSC) to attest that at least two of the four [Department Legislative Liaison Specialist (DLLS)] positions in the DOTC be made permanent. The request was granted by the CSC by Resolution No. 01-0233 dated January 23, 2001.

Upon verbal query by DOTC Director Carina S. Valera (Director Valera), then CSC Chairman Corazon Alma de Leon advised the DOTC that the incumbents of the formerly coterminous DLLS positions had no vested right to occupy the already permanent DLLS positions, and that they were not automatically appointed thereto; and the positions which were made permanent could only be filled up by following existing CSC rules and regulations as well as DOTC policies and guidelines on the appointment of personnel.

By letter of January 29, 2001, DOTC Assistant Secretary for Administrative and Legal Affairs Wilfredo Trinidad (Trinidad) sought from the CSC a written confirmation of its Chairman's above-said advice. Pending receipt of a reply from the CSC, Trinidad sent separate letters dated February 22, 2001 to [Ereliza Z. Mamaril] and Rolando Cruz, the other incumbent of the two DLLS positions, advising each of them as follows:

The change of the nature of the DLLS position which you held, from coterminous to permanent pursuant to CSC Resolution No. 010233 dated 23 January 2001 did not automatically make you the holder of the now permanent DLLS position.

This interpretation was confirmed by Director Carina S. Valera with the then CSC Chairman de Leon.

As your appointment was of cotermin[o]us nature, your services automatically terminated with the non-existence of the cotermin[o]us position and the advent of the new appointing authority.

When the new DLLS permanent positions are authorized to be filled up, you can apply therefor. In the meantime, you may seek appointment to any other vacant position that suits your qualifications. Needless to say, selection in any case will follow the usual process in accordance with the DOTC guidelines and the CSC rules and regulations.

Acting on the above-said query of Trinidad, the CSC, by Resolution No. 01-0502 dated February 22, 2001 which was received at his office on March 9, 2001 and by the DOTC Personnel Division on March 12, 2001, ruled that "the two occupants of the two DLLS positions are *ipso facto* appointed to such positions under permanent status if they meet the minimum requirements of the said positions.

In light of the contrary advice previously given by the former CSC Chairman de Leon, the DOTC, by letter of April 27, 2001, sought clarification on CSC Resolution No. 01-0502.

By Resolution No. 01-1409 issued on August 20, 2001, the CSC modified Resolution No. 01-0502 by declaring that "the **previous incumbents** of the two Department Legislative Liaison Specialist (DLLS) positions **were no longer existing employees as of the date said positions were declared by the Commission as career** in CSC Resolution No. 01-0233 dated January 23, 2001," and that "DOTC Secretary Pantaleon D. Alvarez may now appoint who will occupy these newly created DLLS positions x x x."

x x x x

[Mamaril] and Cruz filed a Motion for Reconsideration of CSC Resolution No. 01-1409. By Resolution of November 26, 2002, the CSC issued Resolution No. 02-1504 reconsidering and setting aside CSC Resolution No. 01-1409. [Mamaril and Cruz were] thus reinstated to [their] former position[s] on November 26, 2002.

The DOTC filed a Motion for Reconsideration of CSC Resolution No. 02-1504 which was denied, by Resolution No. 03-1019 dated September 26, 2003. In the same Resolution, the CSC declared that [Mamaril] and Cruz are not entitled to back salaries from the time they were separated from the service up to their date of reinstatement.

[Mamaril] thus filed a Motion for Reconsideration of said Resolution No. 03-1019 only insofar as the CSC held that she was not entitled to backwages. By Resolution No. 04-0279 issued on March 18, 2004, the

CSC denied [Mamaril's] Motion for Reconsideration.^[4] (Emphasis supplied)

Cruz and Mamaril filed separate petitions for review with the CA assailing Resolution No. 03-1019 only insofar as the CSC held that they were not entitled to backwages, docketed as CA-G.R. SP No. 80353 and CA-G.R. SP No. 83314, respectively.

In a Resolution^[5] dated May 14, 2004, the CA dismissed CA-G.R. SP No. 83314 for lack of verification and certification against forum shopping. When Mamaril's Motion for Reconsideration was denied in the CA Resolution dated August 6, 2004, she filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 164929.

On April 10, 2006, the Court *en banc* rendered a Decision^[6] denying Mamaril's petition, finding it to be procedurally and substantially without merit. The Decision became final and executory, and entry of judgment was made of record on May 25, 2006.

Meanwhile, on June 23, 2003, the CA rendered a Decision^[7] in CA-G.R. SP No. 80353, setting aside CSC Resolution No. 03-1019 dated September 26, 2003, and ordering the DOTC to pay Cruz his back salaries from the date of his dismissal up to his actual reinstatement. While the CA viewed the dismissal as having been attended with good faith, it nonetheless held that Cruz was entitled to backwages since prevailing jurisprudence supports the award of backwages to illegally dismissed civil servants, finding inapplicable the DOTC cited case of *Octot v. Ybañez*.^[8]

The DOTC filed a Motion for Reconsideration but it was denied by the CA in its Resolution^[9] dated June 4, 2007.

Hence, the present petition on the following grounds:

I

THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN HOLDING THAT PETITIONER'S GOOD FAITH IN TERMINATING RESPONDENT DID NOT PRECLUDE THE LATTER FROM RECEIVING BACK SALARIES IN HIS FAVOR.

II

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT FAILED TO APPLY IN THE INSTANT CASE THE RULING IN OCTOT VS. YBAÑEZ, 111 SCRA 79 (1982) THAT "IN THE ABSENCE OF PROOF THAT [A GOVERNMENT AGENCY] ACTED IN BAD FAITH AND WITH GRAVE ABUSE OF DISCRETION, [A DISMISSED GOVERNMENT EMPLOYEE] IS NOT ENTITLED TO BACKWAGES AND CONSEQUENTLY CANNOT CLAIM FOR DAMAGES.

III

THE COURT OF APPEALS ERRED IN NOT APPLYING THE RULE THAT A

PUBLIC OFFICIAL IS NOT ENTITLED TO ANY COMPENSATION IF HE HAS NOT RENDERED ANY SERVICES.^[10]

The DOTC contends that a government employee who was dismissed from service in good faith is not entitled to back salaries upon his reinstatement, relying on the Court's application of *Octot* in *Mamaril* ; the assailed Decision should be set aside under the doctrine of *stare decisis*, since the facts in *Mamaril* and the present case are exactly the same.

On the other hand, Cruz contends that his dismissal was effected in bad faith since he was terminated without awaiting the reply of the CSC to the query of DOTC regarding his employment status; *Octot* is inapplicable because prevailing jurisprudence supports the award of backwages for a maximum period of five years to an illegally dismissed employee.

The Court finds for the petitioner DOTC.

As stated at the outset, the pivotal question of whether a government employee who was dismissed from service in good faith is entitled to back salaries upon his reinstatement has already been resolved in the negative in *Mamaril*, thus:

The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, so shall he earn. Compensation is paid only for service actually or constructively rendered.

[Mamaril's] services were actually terminated on September 1, 2001, after the CSC issued Resolution No. 01-1409 dated August 20, 2001 declaring that "the previous incumbents of the two Department Legislative Liaison Specialist (DLLS) positions were no longer existing employees as of the date said positions were declared by the Commission as career." She was, however, reinstated on November 26, 2002 after the CSC issued on even date Resolution No. 02-1504 setting aside Resolution No. 01-1409.

Octot v. Ybañez instructs that the good faith or bad faith and grave abuse of discretion in the dismissal or termination of the services of a government employee come into play in the determination of the award of back salaries upon his reinstatement. In said case, the therein petitioner, a security guard in the Regional Health Office No. VII, Cebu City who had been convicted of libel by a trial court, was summarily dismissed pursuant to Presidential Decree No. 6 and LOI Nos. 14 and 14-A issued by then President Marcos directing heads of departments and agencies of the government to weed out undesirable government officials and employees, specifically those who were facing charges or were notoriously undesirable on the ground of dishonesty, incompetence or other kinds of misconduct defined in the Civil Service Law. The therein petitioner was eventually acquitted of the criminal charge. Hence, his request for reinstatement was granted but not his claim for back salaries from the date of his dismissal. This Court, through then Chief Justice Teehankee, held: