

THIRD DIVISION

[G.R. No. 138238, September 02, 2003]

**EDUARDO BALITAOSAN, PETITIONER, VS. THE SECRETARY OF
EDUCATION, CULTURE AND SPORTS, RESPONDENT.**

DECISION

CORONA, J.:

Before us is a petition for review of the April 15, 1999 resolution^[1] of the Court of Appeals denying petitioner's motion for partial reconsideration of its decision dated November 9, 1998 which ordered petitioner's reinstatement, without backwages.

Petitioner was among the public school teachers who were dismissed by then DECS Secretary Isidro Cariño for ignoring the return to work order while participating in the teacher's mass strike at Liwasang Bonifacio from September to October, 1990.

Records reveal that an administrative complaint was filed against petitioner, together with a certain Dalangin Sarmiento and Filomeno Rafer, charging them with grave misconduct, gross neglect of duty, gross violation of the Civil Service Law and Rules of Reasonable Office Regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interests of the service and absence without leave.

Petitioner failed to give his explanation on the charges against him despite due notice. Thus, he was meted preventive suspension for 90 days and consequently dismissed from the service in a DECS decision dated November 29, 1990.

Petitioner appealed said decision to the Merit System Protection Board but his appeal was dismissed for being filed out of time.

Aggrieved, petitioner appealed to the Civil Service Commission but the appeal and the subsequent motion for reconsideration were both denied in the resolutions dated September 8, 1994 and April 14, 1998, respectively.

Petitioner then sought recourse from the Court of Appeals via a petition for *certiorari* which yielded positive results, obtaining for petitioner an order of reinstatement without, however, any award of backwages in his favor. Thus:

WHEREFORE, the petition is hereby given DUE COURSE. Resolution Nos. 94-4979 and 980819 of the Civil Service Commission are SET ASIDE. Accordingly, the Department of Education, Culture and Sports' Decision in Case No. DECS 90-118 is MODIFIED – instead the petitioner is only guilty of Conduct Prejudicial to the Best Interest of the Service for which he is meted out the penalty of suspension from the service for a period of six (6) months without pay considering that the petitioner has been out of

the service for more than seven (7) years now as a result of his dismissal from the service, the Department of Education, Culture and Sports is hereby ORDERED to immediately reinstate petitioner Eduardo Balitaosan.

SO ORDERED.^[2]

Not wholly satisfied with said decision, petitioner moved for its partial reconsideration, praying for an award of backwages, but the same was denied in the above assailed resolution dated April 15, 1999.

Thus, the instant petition.

Petitioner alleges that the Court of Appeals committed reversible error when it refused to apply the ruling in the case of *Fabella, et al. vs. Court of Appeals, et al.*^[3] In the said case, the Court, finding the investigation committee to be without competent jurisdiction, declared that all proceedings undertaken were necessarily void and thus could not provide the legal basis for the suspension or dismissal of the petitioners. The Court declared a denial of due process because the inclusion of a representative of a teacher's organization in the investigating committee, which was indispensable to ensure an impartial tribunal, was not complied with. Consequently, it ordered the payment of back salaries, allowances, bonuses and other benefits and emoluments which had accrued to the teachers involved during the entire period of their preventive suspension and/or dismissal from the service.

Petitioner's reliance on *Fabella* is totally misplaced.

As aptly observed by the Court of Appeals, in *Fabella*, the jurisdiction and composition of the investigation committee was put in issue from the very start. When the Court found the investigation committee to be without competent jurisdiction, it declared all the proceedings undertaken by said committee void; therefore, it could not have provided the legal basis for the suspension and dismissal of private respondents therein.

In the case at bar, however, aside from the catch-all and sweeping allegation of "denial of due process," petitioner never questioned the competence and composition of the investigating committee. He belatedly raised this issue for the first time in the petition for review before the Court of Appeals. Thus, the appellate court acted correctly in rejecting petitioner's argument.

Issues raised for the first time on appeal cannot be considered because a party is not permitted to change his theory on appeal. To allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process.^[4]

In its Decision, the Court of Appeals justified petitioner's reinstatement:

While We view with approbation the authority of the Department of Education, Culture and Sports to punish the public school teachers for engaging in the prohibited action, that is, staging and joining the strike, We, particularly, take note here the seemingly compartmentalized treatment the petitioner suffered from the respondent Civil Service Commission. As petitioner's appeal to the Merit Systems Protection Board of the Civil Service Commission was rebuffed for having been filed