

## FIRST DIVISION

[ G.R. No. 140359, June 19, 2000 ]

**HERMAN CANIETE and WILFREDO ROSARIO, petitioners, vs. THE SECRETARY OF EDUCATION, CULTURE AND SPORTS, respondent.**

### D E C I S I O N

**KAPUNAN, J.:**

Petitioners Herman Caniete and Wilfredo Rosario seek the reversal of the Decision, dated 17 June 1999, of the Court of Appeals in CA-G.R. SP No. 46835 and its Resolution, dated 6 October 1999, denying petitioners' motion for reconsideration.

Petitioners are public school teachers at the Juan Sumulong High School in Quezon City. For being absent on 20 and 21 September 1990, they were charged by Secretary Isidro Cariño, then Secretary of the Department of Education, Culture and Sports, with alleged participation in the mass actions/strikes on said dates. Petitioners were placed under preventive suspension on 21 September 1990. In his decisions, dated 28 May 1991 and 9 July 1992, Secretary Cariño found petitioners "guilty as charged" and dismissed them from the service "effective immediately." The said decisions of Secretary Cariño, however, were set aside by the Merit Systems Protection Board (MSPB) when the case was brought to it on appeal. The MSPB found that petitioners were guilty only of Gross Violation of Existing Civil Service Law and Rules and suspended them for three (3) months without pay.

In its Resolution No. 94-4670, dated 30 August 1994, the Civil Service Commission (CSC) modified the decision of the MSPB. The CSC found that petitioners were only guilty of being absent on 20 and 21 September 1990 without the necessary leave of absence, and not as charged by Secretary Cariño of participating in the mass actions/strikes on said dates. Accordingly, petitioners were meted out the penalty of reprimand. The dispositive portion of the CSC resolution reads:

WHEREFORE, foregoing premises considered, the Commission resolves to find Herman P. Caniete and Wilfredo A. Rosario guilty of Violation of Reasonable Office Rules and Regulations. The assailed decision is thus modified as they are hereby meted out the penalty of reprimand. They are automatically reinstated in the service without payment of back salaries.<sup>[1]</sup>

Petitioners moved for a reconsideration of the CSC resolution insofar as it disallowed the payment of their back salaries. The CSC denied their motion for reconsideration. Petitioners then elevated the case to the CA but the latter affirmed the decision of the CSC. In denying petitioners claim for back salaries, the CA cited *City Mayor of Zamboanga vs. CA*,<sup>[2]</sup> where this Court held:

x x x back salaries may be ordered paid to an officer or employee only if he is exonerated of the charge against him and his suspension or

dismissal is found and declared to be illegal. In *Sales vs. Mathay, Sr.*, 129 SCRA 321, this Court held that a postal clerk suspended for six months for gross neglect of duty is not entitled to back salary if he cannot show that his suspension was unjustified or that he is innocent of the charge.

Thus, the order of payment of full backwages in this case is without lawful basis. Indeed, to allow private respondent to receive full back salaries would amount to rewarding him for his misdeeds and compensating him for services that were never rendered.<sup>[3]</sup>

Petitioners filed a motion for reconsideration of the above decision but the CA denied the same in its Resolution, dated 6 October 1999. Hence, this appeal.

The singular issue that needs to be resolved in this case is whether petitioners, who were earlier dismissed for allegedly participating in mass actions/strikes, are entitled to their back salaries upon their reinstatement after they were found guilty only of violating reasonable office rules and regulations and penalized only with reprimand.

The Court finds for the petitioners.

As correctly pointed out by petitioners, the ruling in *Gloria vs. Court of Appeals*<sup>[4]</sup> is squarely applicable in this case as the facts are substantially the same. In *Gloria*, the public school teachers therein were either suspended or dismissed for allegedly participating in the strikes sometime in September and October 1990. They were eventually exonerated of said charge and found guilty only of violation of reasonable office rules and regulations by failing to file applications for leave of absence. Thus, the penalty of dismissal earlier imposed on them was reduced to reprimand and their reinstatement was ordered. Moreover, this Court affirmed the payment of back salaries of said teachers explaining that although "employees who are preventively suspended *pending investigation* are not entitled to the payment of their salaries even if they are exonerated, we do not agree with the government that they are not entitled to compensation for the period of their suspension *pending appeal* if eventually they are found innocent."<sup>[5]</sup>

The pertinent provisions of the Civil Service Law (Book V, Title I, Subtitle A of the Administrative Code) on preventive suspension are as follows:

SEC. 47. *Disciplinary Jurisdiction.*

(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. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.