

## EN BANC

[ G.R. No. 131012, April 21, 1999 ]

**HON. RICARDO T. GLORIA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE, AND SPORTS, PETITIONER, VS. COURT OF APPEALS, AMPARO A. ABAD, VIRGILIA M. BANDIGAS, ELIZABETH A. SOMEBANG AND NICANOR MARGALLO, RESPONDENTS.**

### DECISION

#### MENDOZA, J.:

This case arose out of the unfortunate strikes and walk-outs staged by public school teachers on different dates in September and October 1990. The illegality of the strikes was declared in our 1991 decision in *Manila Public School Teachers Association v. Laguio, Jr.*,<sup>[1]</sup> but many incidents of those strikes are still to be resolved. At issue in this case is the right to back salaries of teachers who were either dismissed or suspended because they did not report for work but who were eventually ordered reinstated because they had not been shown to have taken part in the strike, although reprimanded for being absent without leave.

The facts are as follows:

Private respondents are public school teachers. On various dates in September and October 1990, during the teachers' strikes, they did not report for work. For this reason, they were administratively charged with (1) grave misconduct, (2) gross neglect of duty, (3) gross violation of Civil Service Law Rules and Regulations and reasonable office regulations, (4) refusal to perform official duty, (5) gross insubordination, (6) conduct prejudicial to the best interest of the service, and (7) absence without leave (AWOL), and placed under preventive suspension. The investigation was concluded before the lapse of their 90-day suspension and private respondents were found guilty as charged. Respondent Nicanor Margallo was ordered dismissed from the service effective October 29, 1990, while respondents Amparo Abad, Virgilia Bandigas, and Elizabeth Somebang were ordered suspended for six months effective December 4, 1990.<sup>[2]</sup>

Respondent Margallo appealed to the Merit Systems and Protection Board (MSPB) which found him guilty of conduct prejudicial to the best interest of the service and imposed on him a six-month suspension.<sup>[3]</sup> The other respondents also appealed to the MSPB, but their appeal was dismissed because of their failure to file their appeal memorandum on time.<sup>[4]</sup>

On appeal, the Civil Service Commission (CSC) affirmed the decision of the MSPB with respect to Margallo, but found the other three (Abad, Bandigas, and Somebang) guilty only of violation of reasonable office rules and regulations by failing to file applications for leave of absence and, therefore, reduced the penalty

imposed on them to reprimand and ordered them reinstated to their former positions.

Respondents filed a petition for certiorari under Rule 65 in this Court. Pursuant to Revised Administrative Circular No. 1-95, the case was referred to the Court of Appeals which, on September 3, 1996, rendered a decision (1) affirming the decision of the CSC with respect to Amparo Abad, Virgilia Bandigas, and Elizabeth Somebang but (2) reversing it insofar as the CSC ordered the suspension of Nicanor Margallo. The appellate court found him guilty of violation of reasonable office rules and regulations only and imposed on him the penalty of reprimand.<sup>[5]</sup>

Private respondents moved for a reconsideration, contending that they should be exonerated of all charges against them and that they be paid salaries during their suspension. In its resolution, dated July 15, 1997, the Court of Appeals, while maintaining its finding that private respondents were guilty of violation of reasonable office rules and regulations for which they should be reprimanded, ruled that private respondents were entitled to the payment of salaries during their suspension "beyond ninety (90) days." Accordingly, the appellate court amended the dispositive portion of its decision to read as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, petition is hereby DENIED. CSC Resolution Nos. 93-2302 dated June 24, 1993 and 93-3124 dated August 10, 1993 (In re: Amparo Abad), CSC Resolution Nos. 93-2304 dated June 24, 1993 and 93-3227 dated August 17, 1993 (In re: Virgilia Bandigas) and CSC Resolution Nos. 93-2301 undated and 93-3125 dated August 10, 1993 (In re: Elizabeth Somebang) are hereby AFFIRMED while CSC Resolution Nos. 93-2211 dated June 21, 1993 are hereby MODIFIED finding petitioner Nicanor Margallo guilty of a lesser offense of violation of reasonable office rules and regulations and meting upon him the penalty of reprimand. Respondent DECS is ordered to pay petitioners Amparo Abad, Virgilia Bandigas, Elizabeth Somebang and Nicanor Margallo their salaries, allowances and other benefits during the period of their suspension/dismissal beyond the ninety (90) day preventive suspension. No pronouncement as to costs.<sup>[6]</sup>

Petitioner Ricardo T. Gloria, then Secretary of Education, Culture, and Sports, moved for a reconsideration insofar as the resolution of the Court of Appeals ordered the payment of private respondents' salaries during the period of their appeal.<sup>[7]</sup> His motion was, however, denied by the appellate court in its resolution of October 6, 1997.<sup>[8]</sup> Hence, this petition for review on *certiorari*.

Petitioner contends that the administrative investigation of respondents was concluded within the 90-day period of preventive suspension, implying that the continued suspension of private respondents is due to their appeal, hence, the government should not be held answerable for payment of their salaries. Moreover, petitioner lays so much store by the fact that, under the law, private respondents are considered under preventive suspension during the period of their appeal and, for this reason, are not entitled to the payment of their salaries during their suspension.<sup>[9]</sup>

Petitioner's contentions have no merit.

## I. Preventive Suspension and the Right to Compensation in Case of Exoneration

The present Civil Service Law is found in Book V, Title I, Subtitle A of the Administrative Code of 1987 (E.O. 292). So far as pertinent to the questions in this case, the law provides:

### 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.

. . . .

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

SEC. 51. *Preventive Suspension.* - The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

SEC. 52. *Lifting of Preventive Suspension. Pending Administrative Investigation.* - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided,* That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

There are thus two kinds of preventive suspension of civil service employees who are charged with offenses punishable by removal or suspension: (1) preventive suspension pending investigation (§51) and (2) preventive suspension pending appeal if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated (§47(4)).

Preventive suspension pending investigation is not a penalty.<sup>[10]</sup> It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation respondent is found innocent of the charges and is exonerated, he should be reinstated.

A. No Right to Compensation for Preventive Suspension Pending Investigation Even if Employee is Exonerated

Is he entitled to the payment of salaries during the period of suspension? As already stated, the Court of Appeals ordered the DECS to pay private respondents their salaries, allowances, and other benefits "beyond the ninety (90) day preventive suspension." In other words, no compensation was due for the period of the preventive suspension pending investigation but only for the period of preventive suspension pending appeal in the event the employee is exonerated.

The separate opinion of Justice Panganiban argues that the employee concerned should be paid his salaries after his suspension.

The Civil Service Act of 1959 (R.A. No. 2260) provided for the payment of such salaries in case of exoneration. Sec. 35 read:

*Sec. 35. Lifting of Preventive Suspension Pending Administrative Investigation.* - When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension.<sup>[11]</sup>

However, the law was revised in 1975 and the provision on the payment of salaries during suspension was deleted. Sec. 42 of the Civil Service Decree (P.D. No. 807) read:

*Sec. 42. Lifting of Preventive Suspension Pending Administrative Investigation.* - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service; *Provided,* That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

This provision was reproduced in §52 of the present Civil Service Law. It is noteworthy that the Ombudsman Act of 1989 (R.A. No. 6770) categorically provides that preventive suspension shall be "without pay." Sec. 24 reads:

Sec. 24. *Preventive Suspension.* - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

It is clear that the purpose of the amendment is to disallow the payment of salaries for the period of suspension. This conclusion is in accord with the rule of statutory construction that -

As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment.<sup>[12]</sup>

The separate opinion of Justice Panganiban pays no heed to the evident legislative intent to deny payment of salaries for the preventive suspension pending investigation.

First, it says that to deny compensation for the period of preventive suspension would be to reverse the course of decisions ordering the payment of salaries for such period. However, the cases<sup>[13]</sup> cited are based either on the former rule which expressly provided that "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension"<sup>[14]</sup> or that "upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid,"<sup>[15]</sup> or on cases which do not really support the proposition advanced.

Second, it is contended that the exoneration of employees who have been preventively suspended is proof that there was no reason at all to suspend them and thus makes their preventive suspension a penalty.

The principle governing entitlement to salary during suspension is cogently stated in Floyd R. Mechem's *A Treatise on the Law of Public Offices and Officers* as follows:

§864. **Officer not entitled to Salary during Suspension from Office.**  
- An officer who has been lawfully suspended from his office is not entitled to compensation for the period during which he was so suspended, even though it be subsequently determined that the cause for which he was suspended was insufficient. The reason given is "that