

## EN BANC

[ G.R. No. 124678, July 31, 1997 ]

**DELIA BANGALISAN, LUCILIN CABALFIN, EMILIA DE GUZMAN,  
CORAZON GOMEZ, CORAZON GREGORIO, LOURDES LAREDO,  
RODOLFO MARIANO, WILFREDO MERCADO, LIGAYA MONTANCES  
AND CORAZON PAGPAGUITAN, PETITIONERS, VS. HON. COURT  
OF APPEALS, THE CIVIL SERVICE COMMISSION AND THE  
SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND  
SPORTS, RESPONDENTS.**

### D E C I S I O N

**REGALADO, J.:**

This is an appeal by certiorari from the judgment of the Court of Appeals in CA-G.R. SP No. 38316, which affirmed several resolutions of the Civil Service Commission finding petitioners guilty of conduct prejudicial to the best interest of the service, as well as its resolution of April 12, 1996 denying petitioners' motion for reconsideration.<sup>[1]</sup>

Petitioners, except Rodolfo Mariano, were among the 800 public school teachers who staged "mass actions" on September 17 to 19, 1990 to dramatize their grievances concerning, in the main, the alleged failure of the public authorities to implement in a just and correct manner certain laws and measures intended for their material benefit.

On September 17, 1990, the Secretary of the Department of Education, Culture and Sports (DECS) issued a Return-to-Work Order. Petitioners failed to comply with said order, hence they were charged by the Secretary with "grave misconduct; gross neglect of duty; gross violation of Civil Service law, rules and regulations and reasonable office regulations; refusal to perform official duty; gross insubordination; conduct prejudicial to the best interest of the service; and absence without official leave in violation of PD 807, otherwise known as the Civil Service Decree of the Philippines." They were simultaneously placed under preventive suspension.

Despite due notice, petitioners failed to submit their answer to the complaint. On October 30, 1990, the DECS Secretary rendered a decision finding petitioners guilty as charged and dismissing them from the service effective immediately.

Acting on the motions for reconsideration filed by petitioners Bangalisan, Gregorio, Cabalfin, Mercado, Montances and Pagpaguitan, the Secretary subsequently modified the penalty of dismissal to suspension for nine months without pay.

Petitioner Gomez likewise moved for reconsideration with the DECS and then appealed to the Merit Systems Protection Board (MSPB). The other petitioners also filed individual appeals to the MSPB, but all of their appeals were dismissed for lack

of merit.

Not satisfied with the aforesaid adjudication of their respective cases, petitioners appealed to the Civil Service Commission (CSC). The appeals of petitioners Cabalfin, Montances and Pagpaguitan were dismissed for having been filed out of time. On motion for reconsideration, however, the CSC decided to rule on the merits of their appeal in the interest of justice.

Thereafter, the CSC issued Resolution No. 94-1765 finding Cabalfin guilty of conduct prejudicial to the best interest of the service and imposing on him a penalty of six months suspension without pay. The CSC also issued Resolutions Nos. 94-2806 and 94-2384 affirming the penalty of nine months suspension without pay theretofore imposed on petitioners Montances and Pagpaguitan.

With respect to the appeals of the other petitioners, the CSC also found them guilty of conduct prejudicial to the best interest of the service. It, however, modified the penalty of nine months suspension previously meted to them to six months suspension with automatic reinstatement in the service but without payment of back wages.

All the petitioners moved for reconsideration of the CSC resolutions but these were all denied,<sup>[2]</sup> except that of petitioner Rodolfo Mariano who was found guilty only of a violation of reasonable office rules and regulations because of his failure to inform the school of his intended absence and to file an application for leave therefor. This petitioner was accordingly given only a reprimand.<sup>[3]</sup>

Petitioners then filed a petition for certiorari with this Court but, on August 29, 1995, their petition was referred to the Court of Appeals pursuant to Revised Administrative Circular No. 1-95.<sup>[4]</sup>

On October 20, 1995, the Court of Appeals dismissed the petition for lack of merit.<sup>[5]</sup> Petitioners' motion for reconsideration was also denied by respondent court,<sup>[6]</sup> hence the instant petition alleging that the Court of Appeals committed grave abuse of discretion when it upheld the resolutions of the CSC (1) that penalized petitioners whose only offense was to exercise their constitutional right to peaceably assemble and petition the government for redress of grievances; (2) that penalized petitioner Mariano even after respondent commission found out that the specific basis of the charges that former Secretary Cariño filed against him was a falsehood; and (3) that denied petitioners their right to back wages covering the period when they were illegally not allowed to teach.<sup>[7]</sup>

It is the settled rule in this jurisdiction that employees in the public service may not engage in strikes. While the Constitution recognizes the right of government employees to organize, they are prohibited from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which will result in temporary stoppage or disruption of public services. The right of government employees to organize is limited only to the formation of unions or associations, without including the right to strike.<sup>[8]</sup>

Petitioners contend, however, that they were not on strike but were merely exercising their constitutional right peaceably to assemble and petition the

government for redress of grievances. We find such pretension devoid of merit.

The issue of whether or not the mass action launched by the public school teachers during the period from September up to the first half of October, 1990 was a strike has been decided by this Court in a resolution, dated December 18, 1990, in the herein cited case of Manila Public School Teachers Association, et al. vs. Laguio, Jr., supra. It was there held "that from the pleaded and admitted facts, these 'mass actions' were to all intents and purposes a strike; they constituted a concerted and unauthorized stoppage of, or absence from, work which it was the teachers' duty to perform, undertaken for essentially economic reasons."

It is an undisputed fact that there was a work stoppage and that petitioners' purpose was to realize their demands by withholding their services. The fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.<sup>[9]</sup>

The ability to strike is not essential to the right of association. In the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose.<sup>[10]</sup>

Further, herein petitioners, except Mariano, are being penalized not because they exercised their right of peaceable assembly and petition for redress of grievances but because of their successive unauthorized and unilateral absences which produced adverse effects upon their students for whose education they are responsible. The actuations of petitioners definitely constituted conduct prejudicial to the best interest of the service, punishable under the Civil Service law, rules and regulations.

As aptly stated by the Solicitor General, "It is not the exercise by the petitioners of their constitutional right to peaceably assemble that was punished, but the manner in which they exercised such right which resulted in the temporary stoppage or disruption of public service and classes in various public schools in Metro Manila. For, indeed, there are efficient but non-disruptive avenues, other than the mass actions in question, whereby petitioners could petition the government for redress of grievances."<sup>[11]</sup>

It bears stressing that suspension of public services, however temporary, will inevitably derail services to the public, which is one of the reasons why the right to strike is denied government employees.<sup>[12]</sup> It may be conceded that the petitioners had valid grievances and noble intentions in staging the "mass actions," but that will not justify their absences to the prejudice of innocent school children. Their righteous indignation does not legalize an illegal work stoppage.

As expounded by this Court in its aforementioned resolution of December 18, 1990, in the Manila Public School Teachers Association case, ante:

"It is, of course, entirely possible that petitioners and their member-teachers had and have some legitimate grievances. This much may be conceded. After all, and for one thing, even the employees of the Court have found reason to complain about the manner in which the provisions

of the salary standardization law on pay adjustments and position classification have been, or are being, implemented. Nonetheless, what needs to be borne in mind, trite though it may be, is that one wrong cannot be righted by another, and that redress, for even the most justifiable complaints, should not be sought through proscribed or illegal means. The belief in the righteousness of their cause, no matter how deeply and fervently held, gives the teachers concerned no license to abandon their duties, engage in unlawful activity, defy constituted authority and set a bad example to their students.”

Petitioners also assail the constitutionality of Memorandum Circular No. 6 issued by the Civil Service Commission. The resolution of the said issue is not really necessary in the case at bar. The argument of petitioners that the said circular was the basis of their liability is off tangent.

As a general rule, even in the absence of express statutory prohibition like Memorandum Circular No. 6, public employees are denied the right to strike or engage in a work stoppage against a public employer.<sup>[13]</sup> The right of the sovereign to prohibit strikes or work stoppages by public employees was clearly recognized at common law. Indeed, it is frequently declared that modern rules which prohibit such strikes, either by statute or by judicial decision, simply incorporate or reassert the common law rule.<sup>[14]</sup>

To grant employees of the public sector the right to strike, there must be a clear and direct legislative authority therefor.<sup>[15]</sup> In the absence of any express legislation allowing government employees to strike, recognizing their right to do so, or regulating the exercise of the right, employees in the public service may not engage in strikes, walkouts and temporary work stoppages like workers in the private sector.<sup>[16]</sup>

On the issue of back wages, petitioners’ claim is premised on the allegation that their preventive suspension, as well as the immediate execution of the decision dismissing or suspending them, are illegal. These submissions are incorrect.

Section 51 of Executive Order No. 292 provides that “(t)he 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.”

Under the aforesaid provision, it is the nature of the charge against an officer or employee which determines whether he may be placed under preventive suspension. In the instant case, herein petitioners were charged by the Secretary of the DECS with grave misconduct, gross neglect of duty, gross violation of Civil Service law, rules and regulations, and reasonable office regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of the service and absence without official leave (AWOL), for joining the teachers’ mass actions held at Liwasang Bonifacio on September 17 to 21, 1990. Hence, on the basis of the charges against them, it was within the competence of the Secretary to place herein petitioners under preventive suspension.