

## SECOND DIVISION

[ CA-G.R. SP No. 134641, February 26, 2015 ]

**JOSEFINA C. FERNANDEZ, PETITIONER, VS. SOCIAL SECURITY SYSTEM, REPRESENTED BY HON. EMILIO S. DE QUIROS, JR. AS ITS PRESIDENT AND CEO, RESPONDENT.**

### D E C I S I O N

**GONZALES-SISON, M., J.:**

By Petition for Review under Rule 43 of the Rules of Court, petitioner Josefina C. Fernandez seeks to annul the Resolution of Civil Service Commission dated 02 September 2013, the dispositive portion of which states, thus:

*"**WHEREFORE**, the motion filed by Josefina C. Fernandez, Cashier, Cashiering Department, Social Security System (SSS), Quezon City, for the implementation of the Court of Appeals (CA) Decision promulgated on December 9, 2011 which affirmed the Civil Service Commission (CSC) Resolution Nos. 10-0861 and 10-00175 dated May 4, 2010 and October 6, 2010, respectively, finding her guilty of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service but with the modification that the penalty of dismissal and all other accessory penalties are vacated and she is imposed the penalty of suspension from office without pay for one (1) year, is **PARTLY GRANTED**.*

*Accordingly, SSS President and CEO Emilio S. De Quiros, Jr., is directed to immediately reinstate Josefina C. Fernandez to her former position as Cashier without payment of backwages.*

*The Civil Service Commission-National Capital Region (CSC-NCR), Quezon City, is directed to monitor the implementation of this Resolution and to submit a report of compliance within five (5) days from receipt hereof."*<sup>[1]</sup>

as well as Resolution No. 14-00282 dated 18 February 2014 denying petitioner's Partial Motion for Reconsideration.

Petitioner Josefina C. Fernandez, Cashier, Cashiering Department of the Social Security System (SSS) of Quezon City, filed a request before the Civil Service Commission for the implementation of a Court of Appeals Decision promulgated on 09 December 2011 which partly granted her petition for review from the Civil Service Resolutions Nos. 10-0861 and 10-00175, dated 04 May 2010 and 06 October 2010, respectively.

The Court of Appeals Decision affirmed both the CSC Resolutions finding petitioner guilty of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service with the modification that the penalty of dismissal and all other accessory

penalties are vacated and instead, the penalty of suspension from office without pay for one (1) year was imposed. It also affirmed the order for the restoration of the sum of money lost.

In the said motion, petitioner requested the CSC to issue an order directing the SSS to immediately reinstate her to her former position or equivalent position and to pay her backwages reckoned from the time that the one (1) year period of suspension as a penalty had elapsed or from 20 February 2010 until her actual reinstatement.

On 02 September 2013, CSC issued a Resolution<sup>[2]</sup> partially granting her motion and directed the SSS to immediately reinstate her to her former position as Cashier without payment of backwages.

Petitioner filed a Motion for Partial Reconsideration of the said Resolution and the same was denied in a Resolution dated 18 February 2014.

Hence, this Petition for Review, petitioner raising as ground, thus:

WITH ALL DUE RESPECT, A SERIOUS ERROR WHICH CONSTITUTE A GRAVE ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT CIVIL SERVICE COMMISSION TO DENY THE CLAIM OF PETITIONER FERNANDEZ OF HER BACKWAGES AFTER THE LAPSE OF HER ONE (1) YEAR PERIOD OF SUSPENSION AS CLEARLY DECREED BY THE HONORABLE COURT OF APPEALS.

Petitioner claims that CSC committed a very serious error which constitute grave abuse of discretion in not holding Social Security System (SSS) liable to pay petitioner's backwages after the lapse of her one (1) year suspension. She insists that the dispositive portion of the Court of Appeals Decision dated 09 December 2011 is clear, *i.e.*, she will be suspended only for one (1) year without pay, hence, she concludes, that after the lapse of her one (1) year suspension, she is already entitled to her backwages until she was actually reinstated on 25 September 2013.

On the other hand, respondent SSS avers that the petition is now barred by the principle of immutability of judgment. Petitioner allegedly did not bother to pursue through a motion for reconsideration and/or appeal her case her prayer for back salaries, thus, in effect, cannot ask for the modification of the decision in CA G.R. SP No. 117130 to grant her back salaries. Furthermore, respondent SSS maintains that since petitioner was found neither innocent of the charges nor the preventive suspension (dismissal) pending appeal to be unjustified, the denial of the award of back salaries is proper.

***The Petition is bereft of merit.***

The issue of entitlement to back salaries, for the period of suspension pending appeal, of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle — public officials are only entitled to compensation if they render service. The Supreme Court has excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause