

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**ELDO J. CARIÑO, ARSENIO C.
MIGUEL, JOHNNY F. ILAR, SOTERO
M. DE CASTRO, GUSTAVO E. ESPINO
and LICERIO D. ESPINOSA,^[1]
*Petitioners-Appellants,***

-versus-

**G.R. No. L-19808
September 29, 1966**

**AGRICULTURAL CREDIT AND
COOPERATIVE FINANCING
ADMINISTRATION,^[2] ERNESTO T.
JIMENEZ, Administrator and
Chairman of the Board of Governors,
ACCFA, NICOLAS T. ENCISO, ARCADIO
MATELA, HILARIO DE PEDRO,
JOAQUIN ORTEGA and ARTURO
MIRANDA,^[3] Members, Board of
GOVERNORS, ACCFA; DOROTEO
TOLEDO, Treasurer, ACCFA;
FRANCISCO A. LASA, Cashier, ACCFA,
and PEDRO T. TORNEROS, Auditor,
ACCFA,**

Respondents-Appellees.

X-----X

DECISION

SANCHEZ, J.:

Appeal by petitioners on “purely questions of law”^[4] from a judgment of the Court of First Instance of Manila^[5] as follows:

“WHEREFORE, the petition is dismissed but the respondent ACCFA is hereby ordered to pay the petitioners separation pay equivalent to one month pay or 15 days for every year of service, whichever is greater, a fraction of at least six months being considered as one whole year (Republic Act No. 1052, as amended by Republic Act No. 1787), plus attorneys’ fees which the court fixes in the sum of P500 and costs.”

Petitioners-appellants were appointed permanent employees of the ACCFA. Their positions, salaries and dates of appointment are, as follows:

<u>Name</u>	<u>Position</u>	<u>Salary</u>	<u>Appointment</u>
Eldo J. Cariño (Lawyer)	Confidential	P2,400	July 1, 1955
	Agent	2,760	July 1, 1956
		2,940	July 1, 1957
Gustavo E. Espino (First Grade, Civil Service)	Confidential	2,400	Sept. 19, 1955
	Agent	2,580	July 1, 1956
		2,760	July 1, 1957
Arsenio C. Miguel (Lawyer)	Confidential	2,400	July 1, 1955
	Agent	2,760	July 1, 1956
		2,940	July 1, 1957
Sotero M. de Castro (Lawyer)	Confidential	3,120	July 13, 1955
	Investigator	3,300	July 1, 1956
		3,480	July 1, 1957
Johnny F. Ilar (Lawyer)	Confidential Investigator	2,407.20	April 15, 1958

The foregoing petitioners are all first grade eligibles. Except Gustavo E. Espino, they are all lawyers.

Originally, they were assigned to the Special Operations Service unit of the ACCFA. Their duties consisted of conducting investigations of charges of irregularities in any branch of the ACCFA and appearing as witnesses in court. De Castro, Miguel and Ilar were, on August 11, 1958, transferred to the Office of the General Counsel, per Special Order No. 673.^[6]

On September 17, 1958, petitioners were advised that their items in the budget were abolished by the Board of Governors. Consequently, their services were terminated. Hence, the present suit for mandamus to compel reinstatement, payment of back salaries, moral damages, attorneys' fees and costs.

1. Ostensibly, petitioners' positions were abolished for reasons of economy. Well did the trial court say that such abolition was "a mere subterfuge to remove petitioners in order to give room to their (members of the Board of Governors') own political proteges". Because, as the court correctly pointed out, shortly after the abolition, "appointments to many positions involving higher salaries were extended to new appointees". True, these new appointment were given designations different from "confidential investigator" or "confidential agents"; but the "work involved in said appointments was the same work performed by the employees (petitioners) who were removed."^[7]
2. The economy reason out of the way, the result is that petitioners were separated from the service without cause. They have not lost the confidence of their superiors. On the contrary, four of them deserved progressively-merited promotion in pay. The fourth (Ilar) was but a recent employee. Ironically enough, all of them were thrown out of job. Their positions were written off. But the same offices tagged with other names were promptly restored, only to be occupied by new and different appointees. This, we must say, is no more than abolition of the employees themselves — not their positions. Bad faith taints such removal. It was done in the whimsical exercise of arbitrary power. Petitioners are permanent employees. The courts' duty is to restore them to

their positions, to direct payment of their salaries from separation to their reinstatement.^[8]

3. We see no necessity to pass on respondents' claim (Appellees' brief, p. 2), that petitioners' positions are "primarily confidential". For it is immaterial to the present inquiry. Section 1, Article XII of the Constitution, on this point reads:

"Section 1. A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination."^[9]

This Court recently ruled that the foregoing constitutional precept merely excepts primarily confidential positions from the coverage of "the rule requiring appointments in the Civil Service to be made on the basis of merit and fitness as determined from competitive examinations" (citing *Jover vs. Borra*, 93 Phil., 506; 49 Off. Gaz. (No. 7) 2755) but that "the Constitution does not exempt such positions from the operation of the principle emphatically and categorically enunciated in Section 4 of Article XII, that —

'No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.'

And which recognizes no exception."^[10]

Again, we state that petitioners are entitled to reinstatement.

4. The lower court's decision dismissing the petition is grounded upon petitioners' alleged failure to exhaust all administrative remedies.

Here are the facts bearing on this point: On October 23, 1958, upon learning of their separation from service, petitioners wrote the ACCFA Board of Governors. Petitioners underscored civil service eligibility, efficiency and permanence of their positions, and requested reinstatement. On October 28, 1958, petitioner Gustavo E. Espino (and one Rafael Pedroche) wrote the Commissioner of Civil Service, brought to his attention their separation, sought clarification and advice. On October 30, 1958, instead of resolving their problem, the Commissioner of Civil Service referred the matter to the ACCFA Administrator. On November 21, 1958, ACCFA's administrator justified the action taken by its board, upon the grounds that the abolition was for purposes of economy; that petitioners' positions were confidential in nature, and that their tenure depended upon the appointing power. Follow-up letter of Espino dated December 12, 1958 merited no reply from the Civil Service Commissioner.

On December 15, 1958, Espino, on behalf of petitioners, wrote Major Federico Salcedo of the PCAPE. He complained against their separation and prayed for presidential intervention. Major Salcedo — on behalf of the Office of the President of the Philippines — answered that no action could be taken on their cases “in view of the policy of retrenchment enunciated by the ACCFA Board of Governors.”^[11]

In our opinion, petitioners have, in substance, exhausted all administrative remedies. The Civil Service Commissioner sat on their petition. That stopped them from appealing to the Civil Service Board. Besides, the appeal to the Civil Service Board becomes a useless ceremony. The fact is that the Office of the President had closed the door thereto — no action could be taken on petitioners' plight because of the alleged retrenchment policy.

At any rate, exhaustion of administrative remedies is not a hard and fast rule. It admits of exceptions. Amongst these are that (1) the question in dispute is “purely a legal one” and (2) the controverted act is “patently illegal.”^[12] The question involved here is purely one of law. Petitioners' dismissal, too, was patently illegal. The present case fits into the foregoing legal

precepts. No necessity there was to resort first to administrative remedies.

5. Respondents now urge upon us the argument that petitioners are in estoppel. They aver that petitioners accepted their separation pay and terminal leave benefits.^[13] After suit was filed herein, petitioners Sotero M. de Castro and Eldo J. Cariño collected one-month separation pay; all of them received terminal leave pay,^[14] except Johnny F. Ilar.

Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not to have waived any of their rights.^[15] *Renuntiatio non praesumitur*.

6. Petitioners seek moral damages in the sum of P15,000 for each of them. Respondents who composed the ACCFA board were sued in their official capacities as government officials. They cannot be held personally liable because, as private individuals — as contradistinguished from their being ACCFA officials — they are not parties to this suit. Besides as we have observed a few years back, moral damages are “already included in, if not absorbed by, the back salaries” to which petitioners are entitled.^[16] Equitable considerations stop us from breaking away from this rule. Award for moral damages is not proper.
7. We now come to attorney’s fees. The award below is for P500.00. Petitioners ask that this amount be raised to P2,000 for each of the petitioners. The Civil Code (Article 2208) allows recovery of attorneys’ fees. It is true that petitioners’ contract with their counsel is that each of the former should pay the latter P2,000.^[17] It is quite clear

though that ACCFA, a third party, is not to be bound by such arrangement.^[18]

The fixation of attorneys' fees rests on the sound discretion of the court. Here, however, the court below reduced the amount to P500, apparently because the amount there recovered was insignificant, and the case on the main was dismissed. Adverting, however, to the efforts exerted by counsel for petitioners, the questions involved, and the benefits resulting from the services of counsel,^[19] we are confident that a total award of P1,000 for all the petitioners is fair and reasonable.

8. Petitioners have been unlawfully dismissed in September, 1958. A long time — eight years — has since passed. Some of them might have made adjustments in life. And this, because they were thrown out of work. What if readjustment by a return to the job becomes impractical, or should entail difficulty? So it is, that the employees' right to backpay and the employer's obligation to pay them should be balanced in one equation. We rule that those of petitioners who decide not to return should be entitled to backpay up to the date the judgment herein becomes final.

Upon the premises, the judgment appealed from is hereby modified and, in consequence.

Judgment is hereby rendered —

1. Ordering respondent Agricultural Credit Administration (successor to respondent Agricultural Credit and Cooperative Financing Administration) and its Board of Governors (now the National Land Reform Council) to reinstate the remaining petitioners to their positions;
2. Ordering said respondent Agricultural Credit Administration to pay their respective back salaries from September 17, 1958, the date of their dismissal, to the date they are reinstated, as follows:

Eldo J. Cariño, at P2,940 per annum;

Gustavo E. Espino, at P2,760 per annum;

Arsenio G. Miguel, at P2,940 per annum;

Sotero M. de Castro, at P3,480 per annum; and

Johnny F. Ilar, at P2,407.20 per annum.

less the amounts they received as separation and/or terminal leave pay: Provided, That in the event any of petitioners should elect not to be reinstated, his back salary shall be computed up to the time this judgment becomes final; and

3. Ordering respondent Agricultural Credit Administration to pay petitioners the sum of P1,000 by way of attorneys' fees.

Costs against Agricultural Credit Administration. So ordered.

Concepcion, C.J., Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, Zaldivar and Castro, JJ., concur.

[1] Petitioner Licerio D. Espinosa withdrew his petition because he was reinstated by respondents (R.A., pp. 21, 51). His withdrawal was approved by the lower court on February 14, 1959 (Record below, p. 25). The remaining petitioners-appellants therefore are Eldo J. Cariño, Arsenio C. Miguel, Johnny F. Ilar, Sotero M. de Castro and Gustavo E. Espino.

[2] Hereinafter referred to merely as the ACCFA. Pursuant to the resolution of this Court dated August 18, 1966, the Agricultural Credit Administration, successor to ACCFA, was substituted in the latter's place as respondent.

[3] Case against respondent Arturo Miranda was definitely dismissed by order of the lower court dated March 8, 1961. R.A., pp. 48-49.

[4] R. A. p. 57.

[5] Civil Case No. 38588, for mandamus; R. A., pp. 56-57.

[6] Exhibit PP, Folder of Exhibits, p. 64.

[7] Record on Appeal, p. 55.

[8] Briones, etc. et al., vs. Osmeña, etc., et al., 55 Off. Gaz. No. 11, pp. 1920-23; Gacho, et al., vs. Osmeña, etc., et al., 55 Off. Gaz., No. 48, pp. 10079, 10090; Mangubat vs. Osmeña, L-12837, April 30, 1959; Gonzales vs. Osmeña, L-15901; December 30, 1961; Urgelio, et al., vs. Osmeña, et al., L-14908,

October 31, 1963; Abanilla, et al. vs. Ticao, etc., et al., L-22271, July 26, 1966.

- [9] Emphasis supplied.
- [10] Corpus vs. Cuaderno, et al., L-23721, March 31, 1965. Our position on this point has been reiterated in Hernandez, etc., et al. vs. Villegas, et al., L-17287. June 30, 1965 (citing with approval the Corpus case), as follows: “For our purposes, we do not need to consider the position involved in this case as primarily confidential because, even assuming the position to be, it is nevertheless subject to the Constitutional provision that ‘No officer or employee in the Civil Service shall be removed or suspended except for cause.’ (Phil. Const., Art. XII, Sec. 4) Villegas’ removal is, therefore, concededly without cause.” See also Sections 3 and 5 of the Civil Service Act of 1949.
- [11] R.A., p. 24; Decision, R. A., p. 54; Exhibit X, Folder of Exhibits, p. 35.
- [12] Gonzales vs. Hechanova, etc., et al., 60 Off. Gaz. No. 6, pp. 802, 806, and cases cited.
- [13] Appellees’ brief, p. 11.
- [14] Exhibits 16-22, Folder of Exhibits, pp. 92-98.
- [15] See Philippine Sugar Institute vs. Court of Industrial Relations, et al., L-13475, September 29, 1960; Urgelio, et al. vs. Osmeña, etc., et al., L-14908, February 28, 1964 (on reconsideration).
- [16] Diaz, et al., vs. Amante, December 26, 1958, 55 Off. Gaz., No. 41; pp. 8643, 8646.
- [17] Exhibit NN, R.A., pp. 26-27, Folder of Exhibits, p. 53.
- [18] Corpus vs. Cuaderno, supra.
- [19] Section 12, Canons of Legal Ethics.