SUPREME COURT
SECOND DIVISION

RAFAEL N. NUNAL,
***Petitioner*,**

-versus-

G.R. No. 78648
January 24, 1989

COMMISSION ON AUDIT AND MUNICIPALITY OF ISABELA, BASILAN,
***Respondents*.**
x----------x

R E S O L U T I O N

MELENCIO-HERRERA, *J.*:

For resolution is petitioner's Motion for Reconsideration of the Minute Resolution of this Court of 11 May 1988 dismissing the Petition for *Certiorari* "for failure of the petitioner to sufficiently show that the public respondent had committed grave abuse of discretion in holding, among others, that the compromise agreement of the parties is not enforceable against the Municipality of Isabela, the latter not having been impleaded as an indispensable party in the case."

In the present Motion, petitioner contends:

"1. The decision does not clearly and distinctly express the facts and the law on which it is based;

"2. The Municipality of Isabela, Basilan, is bound by the compromise agreement; and

"3. Public respondent "Commission on Audit (COA for short) gravely abused its discretion in denying the lawful claim for separation pay by your petitioner." (Motion for Reconsideration, p. 1; Rollo, p. 67)

The facts disclose that on 24 February 1986 petitioner was appointed as Municipal Administrator of Isabela, Basilan. On 1 February 1980 he was administratively charged and dismissed from the service for dishonesty, misconduct and for lack of confidence. On appeal, the Merit Systems Board exonerated petitioner and reinstated him to his position as Municipal Administrator on 8 May 1980.

On 29 January 1981 petitioner was again dismissed for lack of confidence by then Municipal Mayor Alvin Dans under Administrative Order No. 54, Series of 1981. Upon denial of his Motion for Reconsideration, petitioner filed Case No. 43, a suit for Mandamus and Damages with Preliminary Injunction against the Municipal Mayor, the Municipal Treasurer, and the Sangguniang Bayan of Isabela, Basilan, before the then Court of First Instance in Basilan Province, Branch I, praying for reinstatement "with full backwages and other rights inherent in the position." He also filed Case No. 45 with the same Court seeking that he and his wife be paid their back salaries from 1 February 1980 to 31 May 1980 pursuant to the Decision of the Merit Systems Board on 16 February 1981.

On 20 February 1984, during the pendency of the said case, the Sangguniang Bayan of Isabela, Basilan, abolished the subject position in its Resolution No. 902, Series of 1984, and Ordinance No. 336, pursuant to the provisions of the Local Government Code.

On 5 December 1984, petitioner and his wife, on the one hand, and on the other, Mayor Dans in his capacity both as Municipal Mayor and as Presiding Officer of the Sangguniang Bayan of Isabela, Basilan, the Municipal Treasurer and the Provincial Fiscal (p. 4, Reply To

Comment of COA), entered into a Compromise Agreement stipulating, among others, that:

> "1. The respondents shall pay petitioner Rafael Nunal all back salaries and other emoluments due him by reason of his employment as Municipal Administrator of Isabela, Basilan, covering the period from January 1, 1980 to August 15, 1984, together with accumulated vacation/sick leaves, midyear and Christmas bonuses in 1982 and 1983, and separation pay under the Local Government Code, which are reflected in the computation hereto attached and made an integral part hereof." (p. 13, Rollo)

Under the same Compromise Agreement, petitioner was also considered as "retired" upon receipt of the monetary considerations mentioned therein.

On 12 December 1984, the Court approved the Compromise Agreement.

On 1 April 1985, petitioner collected his retirement benefits although, concededly, no provision for the same had been included in the Compromise Agreement (Petition, p. 6; Rollo, p. 9).

On 17 September 1985, petitioner filed his claim for separation pay in the amount of P54,092.50 to which he is allegedly entitled due to the abolition of the position of Municipal Administrator, which separation pay is provided for by the Local Government Code (B.P. 337, Section 76).

On 6 January 1986 the Municipal Treasurer forwarded petitioner's claim to the Provincial Auditor of Basilan. On 11 January, 1986, in a First Indorsement, the Provincial Auditor opined that the claim was legal and proper but payment thereof was made subject to availability of funds and the ruling of the Regional Office of the Commission on Audit, Region IX, Zamboanga City.

On 12 February 1986, in a 2nd Indorsement, the Regional Director of the Commission on Audit, Region IX, Zamboanga City, reversed the Provincial Auditor of Basilan and denied petitioner's claim for

separation pay. Petitioner's Motion for Reconsideration was forwarded to the Commission on Audit (COA), Central Office, Quezon City.

On 13 October 1986 the COA Central Office, in its Decision No. 388, not only denied petitioner's claim for separation pay but also disallowed the other payments made to petitioner. It held:

> "Premises considered, and it appearing that Mr. Nunal has been paid back salaries and other emoluments in the total amount of P90,362.96 pursuant to the Compromise Agreement, supra, this Commission hereby directs that any and all payments made to Mr. Nunal corresponding to the period when he was no longer in the government service should be disallowed in audit without prejudice to his right of recourse against the officials personally liable for his unlawful dismissal." (pp. 15-16, Rollo)

Thus, this recourse by petitioner alleging grave abuse of discretion by COA, which Petition we had previously dismissed in our Resolution of 11 May 1988 as heretofore adverted to.

It appearing, however, that the Compromise Agreement was duly signed by Mayor Alvin Dans as Mayor and as Presiding Officer of the Sangguniang Bayan, by the Municipal Treasurer, and by the Provincial Fiscal as their lawyer (Motion for Reconsideration, p. 3); that the case was one for reinstatement and backwages; and following the ruling of this Court in Gementiza vs. Court of Appeals (G.R. Nos. L-41717-33, 113 SCRA 477, April 12, 1982), the Municipality of Isabela should be deemed as impleaded in this case, it being apparent that the officials concerned had been sued in their official capacity.

> "It should be noted that before the Court below, respondents sued petitioner Mayor alone. However, respondents, too, prayed for a Writ of Mandamus to compel petitioner Mayor to reinstate them with back salaries and damages. Respondents, therefore, actually intended to sue petitioner in his official capacity. Failure to implead the Municipality and other municipal authorities should not deter this Court, in the interests of justice and equity, from including them herein as respondents." (at p. 488)

The Compromise Agreement, therefore, must be held binding on the Municipality of Isabela, which was not, in any way, deprived of its day in Court (Gabutas vs. Castellanes, L-17323, 14 SCRA 376, June 23, 1965). Thus, the payments to petitioner of the sums of P68,389.25 as back salaries, P21,387.71 as total accumulated vacation/sick leaves, P772.75 as Christmas bonus, and the back salaries of Mrs. Nanie B. Nunal in the sum of P3,096.00, have to be upheld. It likewise appears that retirement benefits had also been collected by petitioner on 1 April 1985.

In respect, however, of the separation pay claimed by petitioner, we uphold the ruling of the COA reading in part:

> "Anent the second issue, this Commission believes and so holds that the instant claim for separation pay in addition to the retirement benefits earlier received by claimant is bereft of any legal basis. Culled from the records is the fact that Mr. Nunal was dismissed from the service on January 29, 1981 and has not been reinstated to the service until his position of Municipal Administrator of Isabela was abolished. In other words, he was no longer in, or had already been separated from, the service when the said position was abolished. Evidently then, his separation from the service was not attributable to the abolition of the position but was due to his dismissal and, therefore, Section 76 of Batas Pambansa Blg. 337 which provides —
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> > 'Section 76.Abolition of Position. — When the position of an official or employee under the civil service is abolished by law or ordinance, the official or employee so affected shall be reinstated in another vacant position without diminution of salary. Should such position not be available, the official or employee affected shall be granted a separation pay equivalent to one month salary for every year of service over and above the monetary privileges granted to officials and employees under existing law.'
>
> cannot be validly invoked as legal basis for the claim for separation pay. Moreover, the fact remains that as earlier seen

> Mr. Nunal has already been paid his retirement benefits under the existing retirement law. His entitlement, therefore, to separation pay under Batas Pambansa Blg. 337 is offensive to the general policy of the government prohibiting payment of double retirement benefits to an employee." (p. 4, COA Decision No. 388 p. 15, Rollo)

To grant double gratuity is unwarranted (See Cajiuat, et al. vs. Mathay, Sr., G.R. No. L-39743, 124 SCRA 710, September 24, 1983).

It may be that the matter of separation pay was included in the Compromise Agreement. Nonetheless, it could not be granted outright but still had to be claimed and passed in audit, and has been aptly denied by COA. And although petitioner did file suit against the Municipality for reinstatement, it does not follow that he was not effectively dismissed such that he could still be considered an incumbent whose position had been abolished. A dismissed employee can be considered as not having left his office only upon reinstatement and should be given a comparable position and compensation at the time of reinstatement (Cristobal vs. Melchor, No. L-43203, 101 SCRA 857, December 29, 1980).

Finally, a word on petitioner's contention that the Resolution of this Court under date of 11 May 1988 is not in accordance with Section 14, Article VIII of the 1987 Constitution, which provides:

> "Sec. 14. No decision shall be rendered by any Court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> "No petition for review or motion for reconsideration of a decision of the Court shall be refused due course or denied without stating the legal basis therefor."

In the first place, our "Resolution" of 11 May 1988 was not a "Decision" within the meaning of the Constitutional requirement. This mandate is applicable only in cases "submitted for decision," i.e., given due course and after the filing of Briefs or Memoranda and/or other pleadings, as the case may be. It is not applicable to an Order or Resolution refusing due course to a Petition for Certiorari. In the

second place, the assailed Resolution does state the legal basis for the dismissal of the Petition and thus complies with the Constitutional provision. (Tayamura, et al., vs. IAC, et al., G.R. No. 76355, May 21, 1987 [en banc]; see also Que vs. People, G.R. Nos. L-75217-18, 154 SCRA 160, September 21, 1987).

It may be added that the Writ of Certiorari dealt with in Rule 65 of the Rules of Court is a prerogative Writ, never demandable as a matter of right, "never issued except in the exercise of judicial discretion." (Bouvier's Law Dictionary, 3d Rev. [8th ed.]; Francisco, The Revised Rules, 1972 ed., Vol. IV-B, pp. 45-46, citing 14 C.J.S., 121-122).

ACCORDINGLY, the Resolution of this Court of 11 May 1988 is hereby **PARTIALLY RECONSIDERED** in that the disallowance by respondent Commission on Audit of the amounts ordered paid by the Court of First Instance of Basilan, Branch I, in its Decision dated 12 December 1984, is hereby **SET ASIDE**, but its disallowance of petitioner's claim for separation pay of P54,092.50, is hereby **SUSTAINED**. No costs.

SO ORDERED.

Paras, Padilla, Sarmiento and Regalado, *JJ*., concur.