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[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.*

SYNOPSIS

Petitioners were charged by the Secretary of the Department of Education Culture and Sports (DECS) with various offenses in violation of the Civil Service Law. They were all placed under preventive suspension. The controversy arose in connection with a "mass action" staged by a number of public school teachers allegedly to dramatize their grievances against public school authorities. Acting on appeal, the Civil Service Commission issued a resolution finding the petitioners guilty of conduct prejudicial to the best interest of the service and meted them a six months suspension with automatic reinstatement in service but without payment of backwages. Rodolfo Mariano, however, was found guilty only of violation of office rules and regulations because of his failure to inform the school of intended absence and to file an application for leave, for which he was given a penalty of reprimand. A petition for certiorari was filed by the public school teachers with the Court of Appeals but it was dismissed due to lack of merit, hence, this appeal by certiorari.

The Supreme Court affirmed the decision of the Court of Appeals with modification that Rodolfo Mariano be given backwages from the time he was suspended until his actual reinstatement. The Court ruled that the right of the government employees to organize is limited to the formation of unions or associations, without including the right to strike. The basis of the charges against herein petitioners was within the competence

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of the Secretary of DECS to place them under preventive suspension.

SYLLABUS

1. **CONSTITUTIONAL LAW; CIVIL SERVICE; RIGHT TO SELF-ORGANIZATION; LIMITED TO THE FORMATION OF UNIONS OR ASSOCIATIONS WITHOUT INCLUDING THE RIGHT TO STRIKE.—** 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. 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. 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. 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. To grant employees of the public sector the right to strike, there must be a clear and direct legislative authority therefor. 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.

2. **ID.; ID.; ID.; ID.; WHEN MASS ACTION LAUNCHED BY PUBLIC SCHOOL TEACHERS MAY BE DEEMED A STRIKE; CASE AT BAR.—** 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*

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Public School Teachers Association, et al. vs. Laguio, Jr., G.R. Nos. 95445 and 95590, August 6, 1991, 200 SCRA 323. 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.

3. **ID.; ID.; ID.; ID.; ID.; RATIONALE FOR THE DENIAL OF THE RIGHT TO STRIKE FOR GOVERNMENT EMPLOYEES.—** 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." 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. 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.

4. **ADMINISTRATIVE LAW; PUBLIC OFFICERS; PREVENTIVE SUSPENSION; IMPOSITION AND EXECUTION THEREOF; WHEN PROPER; CASE AT BAR.—** 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,

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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. As to the immediate execution of the decision of the Secretary against petitioners, the same is authorized by Section 47, paragraph (2), of Executive Order No. 292, thus: "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 shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned."

5. **ID.; ID.; ADMINISTRATIVE DUE PROCESS; ESSENCE THEREOF; CASE AT BAR.**— Petitioners' claim of denial of due process must also fail. The records of this case clearly show that they were given opportunity to refute the charges against them but they failed to avail themselves of the same. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek reconsideration of the action or ruling complained of. For as long as the parties were given the opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.

6. **ID.; ID.; PAYMENT OF BACK SALARIES DURING THE PERIOD OF SUSPENSION; WHEN PROPER; CASE AT BAR.**— The issue regarding payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in

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our jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused the suspension and when the suspension is unjustified. Under Section 23 of the Rules Implementing Book V of Executive Order No. 292 and other pertinent civil service laws, in violations of reasonable office rules and regulations, the first offense is punishable by reprimand. To deny petitioner Mariano his back wages during his suspension would be tantamount to punishing him after his exoneration from the charges which caused his dismissal from the service.

7. **ID.; ID.; DENIAL OF SALARY DURING THE PERIOD OF SUSPENSION; WHEN PROPER; RATIONALE.—** The denial of salary to an employee during the period of his suspension, if he should later be found guilty, is proper because he had given ground for his suspension. It does not impair his constitutional rights because the Constitution itself allows suspension for cause as provided by law and the law provides that an employee may be suspended pending an investigation or by way of penalty. Moreover, the general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, he shall earn.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioners.
The Solicitor General for 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.[1]

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[1] *Penned by Justice Antonio M. Martinez, with Justices Delilah Vidallon-Magtolis and Romeo Callejo, Sr. concurring.*

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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 aforestated 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.

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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,[2] 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.[3]

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.[4]

On October 20, 1995, the Court of Appeals dismissed the petition for lack of merit.[5] Petitioners' motion for reconsideration was also denied by respondent court,[6] 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

[2] *Rollo*, CA-G.R. SP No. 38316, 50-85.

[3] *Ibid., id.*, 70-71.

[4] *Ibid., id.*, 131.

[5] *Rollo*, 79-89.

[6] *Ibid.*, 91.

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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.[7]

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.[8]

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."

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[7] *Ibid.*, 20-21.

[8] See *Manila Public School Teachers Association, et al. vs. Laguio, Jr.*, G.R. Nos. 95445 and 95590, August 6, 1991, 200 SCRA 323; *Social Security System Employees Association, et al. vs. Court of Appeals*, et al., G.R. No. 85279, July 28, 1989, 175 SCRA 686; *Alliance of Government Workers, et al. vs. Minister of Labor and Employment*, G.R. No. 60403, August 3, 1983, 124 SCRA 1.

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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.[9]

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.[10]

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."[11]

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.[12] It may be conceded that the petitioners had valid

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[9] *Board of Education v. New Jersey Education Association* (1968) 53 NJ 29, 247 A2d 867.

[10] 48A Am. Jur. 2d, Public Employees, Sec. 2026, 407.

[11] *Rollo*, 141-142.

[12] *Social Security System Employees Association, et al. vs. Court of Appeals,* et al., *supra.*

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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.[13] 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

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[13] Public Employees - Right To Strike, 37 ALR 3d 1156.

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or by judicial decision, simply incorporate or reassert the common law rule.[14]

To grant employees of the public sector the right to strike, there must be a clear and direct legislative authority therefor.[15] 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.[16]

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

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[14] *Ibid.*, 1150.

[15] *The Pinellas County Classroom Teachers Association, Inc. vs. The Board of Public Instruction of Pinellas County, Fla.*, 214 So. 2d 34.

[16] *Social Security System Employees Association, et al. vs. Court of Appeals, et al., supra.*

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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.

As to the immediate execution of the decision of the Secretary against petitioners, the same is authorized by Section 47, paragraph (2), of Executive Order No. 292, thus: "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 shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned."

Petitioners' claim of denial of due process must also fail. The records of this case clearly show that they were given opportunity to refute the charges against them but they failed to avail themselves of the same. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek reconsideration of the action or ruling complained of.[17] For as long as the parties were given the opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.[18]

Having ruled that the preventive suspension of petitioners and the immediate execution of the DECS decision are in

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[17] *Sunset View Condominium Corporation vs. National Labor Relations Commission*, et al., G.R. No. 87799, December 15, 1993, 228 SCRA 466; *Bautista vs. Secretary of Labor*, G.R. No. 81374, April 30, 1991, 196 SCRA 470.

[18] *Lindo vs. COMELEC*, G.R. No. 95016, February 11, 1991, 194 SCRA 251; see *Esber, et al. vs. Sto. Tomas, et al.*, G.R. No. 107324, August 26, 1993, 225 SCRA 664.

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accordance with law, the next query is whether or not petitioners may be entitled to back wages.

The issue regarding payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in our jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused the suspension and when the suspension is unjustified.[19]

With respect to petitioner Rodolfo Mariano, payment of his back wages is in order. A reading of the resolution of the Civil Service Commission will show that he was exonerated of the charges which formed the basis for his suspension. The Secretary of the DECS charged him with and he was later found guilty of grave misconduct, gross neglect of duty, gross violation of the 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, for his participation in the mass actions on September 18, 20 and 21, 1990. It was his alleged participation in the mass actions that was the basis of his preventive suspension and, later, his dismissal from the service.

However, the Civil Service Commission, in the questioned resolution, made a finding that Mariano was not involved in the "mass actions" but was absent because he was in Ilocos Sur to attend the wake and interment of his grandmother. Although the CSC imposed upon him the penalty of reprimand, the same was for his violation of reasonable office rules and regulations because he failed to inform the school of his intended absence and neither did he file an application for leave covering such absences.[20]

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[19] *Miranda vs. Commission on Audit*, G.R. No. 84613, August 16, 1991, 200 SCRA 657; *Abellera vs. City of Baguio, et al.*, G.R. No. L-23957, March 18, 1967, 125 SCRA 1033; *Tanala vs. Legaspi, et al.*, G.R. No. L-22537, March 31, 1965, 13 SCRA 566.

[20] *Rollo*, 100-101.

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Under Section 23 of the Rules Implementing Book V of Executive Order No. 292 and other pertinent civil service laws, in violations of reasonable office rules and regulations, the first offense is punishable by reprimand. To deny petitioner Mariano his back wages during his suspension would be tantamount to punishing him after his exoneration from the charges which caused his dismissal from the service.[21]

However, with regard to the other petitioners, the payment of their back wages must be denied. Although the penalty imposed on them was only suspension, they were not completely exonerated of the charges against them. The CSC made specific findings that, unlike petitioner Mariano, they indeed participated in the mass actions. It will be noted that it was their participation in the mass actions that was the very basis of the charges against them and their subsequent suspension.

The denial of salary to an employee during the period of his suspension, if he should later be found guilty, is proper because he had given ground for his suspension. It does not impair his constitutional rights because the Constitution itself allows suspension for cause as provided by law and the law provides that an employee may be suspended pending an investigation or by way of penalty.[22]

Moreover, the general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, he shall earn. Since petitioners did not work during the period for which they are now claiming salaries, there can be no legal or equitable basis to order the payment of such salaries.[23]

It is also noteworthy that in its resolutions, the Civil Service Commission expressly denied petitioners' right to back wages.

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[21] See *Tanala vs. Legaspi*, et al., *supra*; *Tan vs. Gimenez*, et al., 107 Phil. 17 (1960).

[22] *Austria vs. Auditor General*, G.R. No. L-21918, January 23, 1967, 19 SCRA 79.

[23] See *Sales vs. Mathay, Sr.*, et al., G.R. No. L-39557, May 3, 1984, 129 SCRA 180; *Reyes vs. Hernandez*, 71 Phil. 397 (1941).

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In the case of *Yacia vs. City of Baguio*,[24] the decision of the Commissioner of Civil Service ordering the dismissal of a government employee on the ground of dishonesty was immediately executed pending appeal, but, on appeal, the Civil Service Board of Appeals modified that penalty to a fine equivalent to six months pay. We ruled that the claim of an employee for back wages, for the period during which he was not allowed to work because of the execution of the decision of the Commissioner, should be denied.

The appeal board's modified decision did not exonerate the employee nor did it affect the validity of his dismissal or separation from work pending appeal, as ordered by the Civil Service Commissioner. Such separation from work pending his appeal remained valid and effective until it was set aside and modified with the imposition of the lesser penalty by the appeals board. If the Civil Service Appeals Board had intended to grant him back salaries and to reduce his penalty to six months fine deductible from such unearned back salaries, the board could and should have so expressly stated in its decision.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED, but with the MODIFICATION that petitioner Rodolfo Mariano shall be given back wages without deduction or qualification from the time he was suspended until his actual reinstatement which, under prevailing jurisprudence, should not exceed five years.

SO ORDERED.

Padilla, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and *Panganiban, JJ.*, concur.

Narvasa, C.J., and *Torres, Jr., J.*, are on leave.

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[24] G.R. No. L-27562, May 29, 1970, 33 SCRA 419.