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SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and *Sandoval-Gutierrez, JJ.,* concur.

Panganiban, J., concur except on the dispositions involving the SB Centennial Building (AM 00-8-05 SB)

EN BANC

[A.M. No. P-99-1316. August 31, 2001]

KENNETH S. NEELAND, *complainant, vs.* **ILDEFONSO M. VILLANUEVA, JR., Clerk of Court and *Ex-Oficio* Provincial Sheriff, Bacolod City, and NELSON N. ABORDAJE, Sheriff III, Municipal Trial Court in Cities, Br. 4, Bacolod City,** *respondent.*

SYNOPSIS

Respondent Villanueva, Jr., Clerk of Court and *Ex-Oficio* Provincial Sheriff, was found administratively liable for gross misconduct in failing to supervise respondent Abordaje, Sheriff III, who failed to turn over to the creditor the amount of ₱20,000.00, the difference between the obligation and the proceeds of the auction. The Court, in a resolution, ordered his dismissal which was immediately enforced. On reconsideration, the Court, noting that this is the first administrative complaint against Villanueva, Jr. in his long years of service and who introduced various innovations in court to increase the efficiency of the employees, downgraded the omission to simple neglect of duty and sentenced to pay a fine of ₱5,000.00. Respondent asked for back salaries and other economic benefits withheld from him from the time of his dismissal up to his reinstatement.

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It has been held by this Court that dismissal from the service pending his motion for reconsideration requires the payment of back salaries and other economic benefits to compensate for such unjust action. The payment of backwages and other economic benefits to one who has been harshly penalized for otherwise negligible omissions is well entrenched in labor law, and there is no reason to deny civil servants of its salutary effects.

SYLLABUS

1. **ADMINISTRATIVE LAW; JUDICIARY; CLERK OF COURT; DISMISSAL; UNJUSTIFIED DISMISSAL FROM WORK ENTITLES EMPLOYEE TO BACK SALARIES AND OTHER ECONOMIC BENEFITS; CASE AT BAR.** — With emphasis on the law, the present case clearly falls under a situation of *unjustified dismissal from work, which lays the basis for the claim for back salaries and other economic benefits.* Our Resolution dated 29 October 1999 dismissing respondent Villanueva, Jr., from the service was immediately enforced despite his right to file a motion for reconsideration. We erroneously treated him like a judge who was *immediately thrown out* of his seat as soon as he was declared guilty of gross misconduct to prevent him from committing more injustices in the bench and "bastardizing the judiciary." But respondent Villanueva, Jr., is not a judge but a mere Clerk of Court and *Ex-oficio* Provincial Sheriff. We emphasize that the existence of such right defeats any authority to pursue immediate execution of the Resolution. Under case law, to which we arduously adhere, his dismissal from the service pending his motion for reconsideration requires the payment of back salaries and other economic benefits to compensate for such unjust action.

2. **ID.; ID.; ID.; ID.; PREMATURE IMPLEMENTATION OF DISMISSAL ENTITLES EMPLOYEE TO BACK SALARIES AND OTHER ECONOMIC BENEFITS.** — Execution of decisions takes place only when they become final and executory, and a judgment becomes "final and executory" by operation of law. Execution of decisions before such stage is not allowed unless specifically permitted by statute. Thus, in quasi-judicial agencies, "[w]here the legislature has seen fit to declare that the decision of the quasi-judicial agency is immediately final and executory

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pending appeal, the law expressly so provides." In the present case, neither our Resolution dismissing from the service Clerk of Court Villanueva, Jr., nor any rule promulgated by this Court in connection with administrative disciplinary proceedings deprives any party the opportunity to move for reconsideration, or similarly, decrees the immediate execution of decisions or resolutions. Thus, we stress that the immediate dismissal of respondent Villanueva, Jr., was unwarranted on the ground of prematurity of execution, hence, he must be entitled to back salaries and other economic benefits as mandated in the cases of *Abellera* and *Gimenez*.

3. **ID.; ID.; ID.; ID.; IMPROPER DISMISSAL MANDATES RESTITUTION.** — Restitution is strongly mandated in the present case since the dismissal order against Clerk of Court Villanueva, Jr. was found to be improper. The reconsideration of the initial order is proof of such impropriety or incorrectness of our resolution of dismissal. While the immediate implementation of our order of dismissal may have been correct and could therefore have been legal before this was modified, the modificatory resolution removed completely the basis of such implementation and, as a necessary legal consequence, the effects thereof must be set aside and rectified. This is the essence of justice and the rule of law. As stated in *Batungbakal v. National Development Co.*, "[t]o remedy the evil and wrong committed, the least that could be done is to restore to him the office and post of which he had been illegally deprived, and to include in that remedy or redress payment of the salary which he should have received during this period of illegal suspension and dismissal is far from unreasonable and unjust." In point of procedural law, the payment of back salaries is not unfounded. For, in Sec. 5, Rule 39, of the Rules of Civil Procedure, restitution is called for "in the event the executed judgment is reversed."

4. **ID.; ID.; ID.; ID.; ID.; PAYMENT OF BACK SALARIES AND OTHER ECONOMIC BENEFITS, PURPOSE.** — Back salaries are after all meant to recover from the employer that which the employee had lost by way of wages as a result of his unfounded dismissal.

5. **ID.; ID.; ID.; ID.; ID.; RULE, WELL-ENTRENCHED IN LABOR LAW AND NO REASON TO DENY EFFECTS TO CIVIL**

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SERVANTS. — It is not unprecedented to order the payment of back salaries and other economic benefits to one who has been harshly penalized for otherwise very negligible omissions. This principle is well entrenched in labor law, and there is no reason to deny civil servants of its salutary effects. After all, both are workers in our compassionate understanding of this term.

6. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; "NO WORK, NO PAY" PRINCIPLE DOES NOT APPLY WHERE EMPLOYEE HIMSELF WAS FORCED OUT OF J0B. — We also cannot deny back salaries and other economic benefits on the ground that respondent Clerk of Court did not work. For the principle of "no work, no pay" does not apply when the employee himself was forced out of job.

MELO, *J., dissenting opinion:*

ADMINISTRATIVE LAW; JUDICIARY; DISMISSAL; REINSTATEMENT; PAYMENT OF BACKWAGES AND OTHER ECONOMIC BENEFITS NOT ALLOWED WHERE EMPLOYEE'S PENALTY WAS DOWNGRADED TO FINE; REASON. — The majority opinion engages in semantics when it declares respondent Villanueva Jr. as having been *completely* exonerated of the offense of gross misconduct, respondent being undeniably guilty of neglect of duty. The fact is, we reduced his offense from gross misconduct to simple neglect of duty not because of the lesser gravity of his offense, but because of the mitigating circumstance that his offense was the first that respondent had committed in his long years of service with the judiciary and that he had introduced various innovations in court to increase the efficiency of employees. Thus, in our August 8, 2000 Resolution we stated that "after a review of the records, we note that this is the first administrative complaint against respondent in his long years of service with the judiciary. He has also introduced various innovations in court to increase the efficiency of employees. Nevertheless, we remain convinced that respondent was remiss in his duty in this particular case. It cannot be overlooked that respondent failed to oversee the rightful turnover of the balance of the proceeds of the auction sale to the corresponding party, and more, the payment of the sheriff's commission to the court . . . However, respondent's

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lack of previously derogatory record may be considered in his favor. Hence, we reduce the penalty." Thereafter, we set aside the penalty of dismissal and fined respondent Villanueva Jr. in the amount of ₱5,000.00. It cannot, thus, be said that respondent Villanueva Jr. was *completely exonerated.* Respondent, not having been *completely exonerated*, the *Abellera* and *Tan* cases are not in point in the case at bar. *In a number of cases, starting with Yarcia vs. City of Baguio* (33 SCRA 419 [1970]), we have held that before a public official or employee may be entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee is innocent of the charges preferred against him. For the above reasons, I hold that the immediate implementation of the order of dismissal of the Court *En Banc* pursuant to its original Resolution dated October 29, 1999 was legal and justified even if respondent Villanueva Jr. still had a right to file a motion for reconsideration thereof. Being justified, respondent Villanueva Jr.'s claim for back salaries and other economic benefits on the basis of the reduction in penalty from dismissal to fine must, perforce, be denied, it being plain that he was not completely exonerated of the charge filed against him.

RESOLUTION

BELLOSILLO, *J.*:

This resolves the prayer of respondent Ildefonso M. Villanueva, Jr., to be paid his "back wages and other economic benefits from the time of my 'dismissal' in November 1989 to my reinstatement x x x" contained in his letter addressed to the Honorable Chief Justice Hilario G. Davide, Jr. dated 22 August 2000.

Our first task is to ensure that justice is done to our selfless workers in our own turf – for an efficient and wholesome administration of justice. For, without the massive support and dedicated service of our more than twenty-five thousand men and women in the judiciary who toil day in and day out, even at night when necessary, the swift delivery of justice

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to our countrymen who thirst for immediate and dynamic response[1] cannot be realized.

We are presented in this case the golden opportunity to transform our lavish praises and promises into an inspiring and meaningful action. It would be beyond just doing charity at home or promulgating a hometown decision; rather, at the core lies the option, to paraphrase then U.S. Chief Justice John Edwin Marshall, to do complete justice or justice by halves.

Modifying our Resolution of 29 October 1999 dismissing respondent Clerk of Court and *Ex-oficio* Provincial Sheriff Villanueva, Jr., from the service, our subsequent Resolution of 8 August 2000 only found him liable to pay a fine. While appreciative in the name of fairness that the penalty of dismissal from service has been discarded, complete justice, and not justice by halves, dictates that he be penalized only with the appropriate sanction. For, to deny him the back salaries and other economic benefits for the period he was forced out of work by our 29 October 1999 Resolution dismissing him from the service would be to re-validate this egregious penalty that we have since reversed, and effectively impose upon him another penalty — now estimated to be ₱300,000.00 more or less — in addition to the singular sentence of fine that he has to suffer.

We bear in mind that respondent Villanueva, Jr., was forced by us out of his job – without leaving him any choice – even before he could file a motion for reconsideration. It is unfair that other civil service employees are given the benefit of stay of execution of penalties involving dismissal from work, or even mere suspension, and how we have several times affirmed such stay of execution to be a matter of due process. Yet, for our own employees whom we pay tribute during anniversaries to show our profound gratefulness we have been truly unkind in immediately effecting their dismissal from work, and worse, of unwittingly punishing them with more by depriving them of their

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[1] See "A Genuflection to a Century of Judicial Devotion," Keynote Speech delivered at the Supreme Court Centenary Celebrations for Regions I and II held at the Baguio Convention Center, Baguio City on 4 April 2001.

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back salaries and other economic benefits, even after they have been found liable only for acts that warrant the imposition of a mere fine.

This case in sum boils down to an appeal to our sense of fairness and will to render justice – "complete justice and not justice in halves." This is an attribute of our "genuflection to a century of judicial devotion." Let us go beyond lip service and, for the record, place the taxpayers' money where justice ought to be served. It is here where we can find the firm resolve to keep the judicial torch alive.

We rewind to better grasp the facts: On 16 December 1996 Kenneth S. Neeland filed with the Office of the Chief Justice a complaint against Atty. Ildefonso M. Villanueva, Jr., Clerk of Court and *Ex-Oficio* Provincial Sheriff of the Regional Trial Court of Bacolod City, and Nelson N. Abordaje, Sheriff III of the Municipal Trial Court in Cities, Branch 4, Bacolod City, for gross misconduct. The complaint arose from the foreclosure of a chattel mortgage on a Toyota sedan owned by the mortgagor, Kenneth S. Neeland, to satisfy an obligation of ₱20,000.00 to the mortgagee, Sugarland Motor Sales.

A year before, or on 8 December 1995, Sugarland Motor Sales filed with the City Sheriff, Bacolod City, a request for foreclosure of the chattel mortgage constituted on the mortgaged vehicle of Kenneth S. Neeland, and its sale at public auction to satisfy his obligation to Sugarland Motor Sales. Acting upon the request, City Sheriff Nelson Abordaje seized the motor vehicle and issued a notice of auction sale for 6 February 1996 at the Daewoo Cars compound, Lacson Street, Bacolod City. Accordingly, on the scheduled date, respondent Abordaje proceeded to conduct the auction sale. The seized vehicle was sold to the highest bidder, Sugarland Motor Sales, for ₱40,000.00. Sheriff Abordaje did not, however, turn over to Kenneth Neeland the remaining balance between the sum at which the vehicle was sold and the obligation sought to be satisfied plus expenses of sale amounting to ₱20,000.00. On the date of the sale, Clerk of Court Ildefonso M. Villanueva, Jr., as *ex-oficio* Provincial Sheriff, issued a certificate of sale conveying the motor vehicle

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to Sugarland Motor Sales. Mortgagor Neeland was not present during the auction sale.

The investigating judge, Executive Judge Anastacio I. Lobaton, in his Report dated 21 April 1998, found that the auction sale was conducted in accordance with the prescribed rules and regulations, and "respondent Abordaje was duty bound to demand and collect from the highest bidder, the mortgagee, the aforesaid difference amounting to ₱20,000.00 and deposit the same to (sic) the Office of the Clerk of Court for safekeeping since the mortgagor was not around to claim it. When the highest bidder failed to turn over the said difference, it would have been wise and proper for respondent Abordaje to have rendered a report on the matter to his superior, respondent Villanueva, Jr." Nonetheless, the Executive Judge held that respondent Villanueva, Jr. was liable for the negligence of his subordinate in failing to turn over the balance of the proceeds of the auction sale to the mortgagor. Consequently, he recommended that respondents be reprimanded with warning.

The matter was thereafter referred to the Court Administrator for evaluation, report and recommendation. In his Memorandum dated 11 May 1999, Court Administrator Alfredo L. Benipayo sustained the investigating judge and declared that the chattel mortgage was validly foreclosed, absent any convincing proof of forgery. The Court Administrator agreed with the findings of the investigating judge that both respondents were liable for not demanding from the highest bidder, Sugarland Motor Sales, the difference between the bid price and the obligation of complainant in the amount of ₱20,000.00, further holding that such omission did not amount to gross misconduct.

Unfortunately, we disagreed with the recommendation of the Executive Judge and the Court Administrator. Instead, we found Sheriff Abordaje's failure to turn over to Kenneth Neeland the excess of the bid price as amounting to gross misconduct prejudicial to the best interest of the service. Thus we ruled that "the officer who conducted the foreclosure must demand and actually receive the cash proceeds of the auction sale from the highest bidder and turn over the balance to the mortgagor.

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It was, therefore, irregular for the sheriff not to demand and receive the entire bid price in cash from the winning bidder, or at the very least, to demand the excess amount and turn it over to the mortgagor." As regards Clerk of Court Villanueva, Jr., we stated, "[n]either can respondent Villanueva, Jr., escape responsibility for his failure to supervise Sheriff Abordaje in the performance of the latter's duties. Clerk of Court Villanueva Jr. issued a certificate of sale without ascertaining that the balance of ₱20,000.00 due from winning bidder Sugarland Motor Sales was duly turned over and accounted to the mortgagor. Respondent Villanueva, Jr., a lawyer occupying a position of responsibility, must be alert at all times to an honest conduct of foreclosures of chattel mortgages." Both were thus found to be guilty of *gross misconduct* in the performance of their duties and meted the penalty of "DISMISSAL from the service, with forfeiture of all leave credits and retirement benefits, if any, and with prejudice to re-instatement or re-employment in any agency, branch or instrumentality of the government, including government-owned and controlled corporations." This Resolution dismissing respondents was immediately enforced, and so they were barred from working even before they could move for a reconsideration.

We relented to the motion for reconsideration of respondent Villanueva, Jr., upon our finding that "[a]fter a review of the records, we note that this is the first administrative complaint against respondent in his long years of service with the judiciary. He has also introduced various innovations in court to increase the efficiency of the employees." The offense was accordingly downgraded to simple neglect of duty, and he was sentenced to pay a *FINE* of ₱5,000.00 with a warning that a repetition of the same or similar offense would be dealt with more severely. Notwithstanding this disposition of the motion for reconsideration, we nevertheless sustained our finding that Clerk of Court Villanueva, Jr., was remiss in his duties as *ex-oficio* provincial sheriff for failing to oversee the rightful turnover to the mortgagor of the balance of the proceeds of the auction sale to the mortgagee.

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Respondent Clerk of Court now asks for back salaries and other economic benefits withheld from him from the time of his dismissal up to his reinstatement. The Financial Management Service (FMS) objected to the demand, opining that the demand for payment of back salaries had no legal basis on the principle of "no work, no pay." Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer of this Court, agreed with the recommendation of the FMS that Clerk of Court Villanueva, Jr. should not be paid back salaries and other economic benefits since he was not completely exonerated of the accusation against him; on the contrary, was found guilty of neglect of duty.

There are two (2) items that must be stressed to grant respondent Clerk of Court his prayer for the payment of his back salaries and other economic benefits:

First, even under the *extant rule on the matter*, he is clearly entitled to such demand. For one, the immediate execution of the order of dismissal was premature. There being no rule to the contrary, he was entitled to file a motion for reconsideration, and corollarily, the suspension of the enforcement of the order of dismissal pending resolution of his motion. For another, the physical impossibility of effecting reinstatement for the period of employment that was long gone by reasons not attributable to him entitles him to restitution in the form of back salaries and other economic benefits. For, otherwise, he would find himself unfortunately punished twice for an offense that is properly and singularly penalized only by a fine.

Second, the grant of back salaries and other economic benefits hews well to an employee's aspirations for *moral justice;* precisely, recourse may be had to our corrective powers to avoid a right granted in law from being rendered illusory in fact. For, how could we account for the *additional penalty* when we ourselves declared that the proper penalty under the circumstances was *only a fine*? For sure, we can hark back to the presumptive validity of our earlier Resolution dismissing respondent Clerk of Court, but this presumption does not hold true when we are not being taken to task for the Resolution

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that we made but simply being asked to restore what in the first place was due him. The demand is plainly honestly and firmly one of justice.

Our Resolution dismissing respondent Villanueva, Jr. from the service for *gross misconduct* was not justified. He did not commit any act that would constitute misconduct. He was nonetheless found guilty of simple neglect of duty (of which he was not even charged!) for which he was fined ₱5,000.00.

With emphasis on the law, the present case clearly falls under a situation of *unjustified dismissal from work, which lays the basis for the claim for back salaries and other economic benefits*. Our Resolution dated 29 October 1999 dismissing respondent Villanueva, Jr., from the service was immediately enforced despite his right to file a motion for reconsideration. We erroneously treated him like a judge who was *immediately thrown out* of his seat as soon as he was declared guilty of gross misconduct to prevent him from committing more injustices in the bench and "bastardizing the judiciary." But respondent Villanueva, Jr., is not a judge but a mere Clerk of Court and *Ex-oficio* Provincial Sheriff. We emphasize that the existence of such right defeats any authority to pursue immediate execution of the Resolution. Under case law, to which we arduously adhere, his dismissal from the service pending his motion for reconsideration requires the payment of back salaries and other economic benefits to compensate for such unjust action. In *Abellera v. City of Baguio*,[2] this Court held —

> The rule on 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 this jurisdiction. *Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, RA 2260), but also when the suspension is unjustified*.

In the present case, upon receipt of the decision of the Civil Service Commissioner finding petitioner-appellant guilty, but even before the

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[2] No. L-23957, 18 March 1967, 19 SCRA 600.

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period to appeal had expired, respondents dismissed the latter from the service and another one was appointed to replace him. *The separation of petitioner before the decision of the Civil Service Commissioner had become final was evidently premature. Respondents should have realized that the employee still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period and the possibility of that decision being reversed or modified.* As it did happen on such appeal by the petitioner, the penalty imposed by the Commissioner was reduced by the reviewing Board to only 2 months suspension. And yet, by respondents' action, petitioner was deprived of work for more than 2 years. *Clearly, Abellera's second suspension from office, from July 10, 1961 to November 10, 1963, was unjustified, and the payment of the salaries corresponding to said period is, consequently, proper.* Otherwise, Abellera would, in effect, suffer a suspension longer than that meted him by the Civil Service Board of Appeals (*italics supplied*).

The same ruling was rendered in *Tan v. Gimenez*[3] –

The appeal taken by the petitioner to the Civil Service Board of Appeals from the decision of the Commissioner of Civil Service finding him guilty of grave misconduct and requiring him to resign from the service with prejudice to reinstatement precluded the execution of the decision of the Commissioner of Civil Service. *In other words, the decision did not become final and executory. The decision of the Civil Service Board of Appeals reversing that of the Commissioner of Civil Service and absolving the petitioner from the charge was not reversed or modified by the President. It, therefore, became the final decision on the petitioner's case. Consequently, the petitioner's removal from office was not in accordance with law*; his reinstatement became a ministerial duty of the proper authority; and the payment of back salary was merely incidental to reinstatement (*italics supplied*).

Execution of decisions takes place only when they become final and executory, and a judgment becomes "final and executory" by operation of law.[4] Execution of decisions before

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[3] 107 Phil. 17 (1960).

[4] *Lapid v. CA*, G.R. No. 142261, 29 June 2000, 334 SCRA 73.

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such stage is not allowed unless specifically permitted by statute.[5] Thus, in quasi-judicial agencies, "[w]here the legislature has seen fit to declare that the decision of the quasi-judicial agency is immediately final and executory pending appeal, the law expressly so provides." In the present case, neither our Resolution dismissing from the service Clerk of Court Villanueva, Jr., nor any rule promulgated by this Court in connection with administrative disciplinary proceedings deprives any party the opportunity to move for reconsideration, or similarly, decrees the immediate execution of decisions or resolutions. Thus, we stress that the immediate dismissal of respondent Villanueva, Jr., was unwarranted on the ground of prematurity of execution, hence, he must be entitled to back salaries and other economic benefits as mandated in the cases of *Abellera* and *Gimenez*.

We come to moral justice – to our sense of fairness. Verily, every government employee found to be dishonest in the performance of his duties, after proper hearing, should get the full measure of punishment. But this should not be confused with imposing sanctions in a manner far beyond that fixed in our Resolution dated 8 August 2000. The penalty imposed upon Clerk of Court Villanueva, Jr., was a fine of ₱5,000.00, so its execution could not go beyond what was so determined. While he may have done acts amounting only to an offense penalized with a fine, he ended up suffering suspension or dismissal for the duration of his motion for reconsideration, an additional penalty that was not commensurate with *simple neglect of duty* – the act he was not charged with but found liable for.

In requiring Clerk of Court Villanueva, Jr., to pay a fine, we did not at all indicate that he should have also suffered the penalty of losing his job – and hence of the emoluments attached thereto – for the time that he was dismissed from the service. The fine was the only penalty imposed on him for his alleged failure to properly supervise Sheriff Abordaje. Therefore, respondent Villanueva, Jr., should not be punished with more than what has been imposed, *i.e.*, fine; otherwise, the supplanting

[5] *Ibid.*

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of the charge of *gross misconduct* with *simple neglect of duty* and the consequent imposition of a much lighter penalty from dismissal from the service to a mere fine would be worthless. In effect, respondent Villanueva, Jr., is being punished twice since the physical impossibility of reinstating him to his past and lost period of employment would have already deprived him of salaries and other economic benefits, a loss that is perpetuated by failing to pay him salaries for the same period of time. This is an improper rollover of penalties as we held in *Bautista v. Peralta*[6]—

> In the particular case of petitioner herein, the penalty imposed by the Civil Service Board of Appeals was in effect served by him during the first two months of his preventive suspension. *His reinstatement during the rest of the period was no longer physically possible, but there is no inherent obstacle to his receiving the back salaries corresponding to such period. Denial of the back salaries would amount to an amendment of the decision of the Civil Service Board of Appeals, in effect increasing the two-month suspension meted out to him and converting the preventive suspension into the penalty itself.* It would then make no difference, as far as petitioner is concerned, whether the Board had suspended him for two months or for two years, or indeed for any length of time, provided it did not exceed the period of preventive suspension already undergone. These implications cannot reasonably be read into the Board's decision in this case (*italics supplied*).

It must be pointed out that restitution is strongly mandated in the present case since the dismissal order against Clerk of Court Villanueva, Jr. was found to be improper. The reconsideration of the initial order is proof of such impropriety or incorrectness of our resolution of dismissal. While the immediate implementation of our order of dismissal may have been correct and could therefore have been legal before this was modified, the modificatory resolution removed completely the basis of such implementation and, as a necessary legal consequence, the effects thereof must be set aside and rectified. This is the essence of justice and the rule of law. As stated

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[6] No. L-21967, 29 September 1966, 18 SCRA 223.

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in *Batungbakal v. National Development Co.*,[7] "[t]o remedy the evil and wrong committed, the least that could be done is to restore to him the office and post of which he had been illegally deprived, and *to include in that remedy or redress payment of the salary which he should have received during this period of illegal suspension and dismissal is far from unreasonable and unjust*" (*italics supplied*). In point of procedural law, the payment of back salaries is not unfounded. For, in Sec. 5, Rule 39, of the Rules of Civil Procedure, restitution is called for "in the event the executed judgment is reversed."

Indeed, to insist on denying to respondent Villanueva, Jr., his back salaries and other economic benefits on the ground that he has not been *completely exonerated* or that he *did not work*, is to indulge ourselves in a tyranny of concepts. To adopt such formula would be to resort to circuitous arguments: he cannot be compensated because his dismissal was justified or because he did not work. But, for one thing, such penalty can never be justified since the facts, although they remain the same, only amount to an offense that is clearly not so punishable. For the record, Clerk of Court Villanueva, Jr. was *completely exonerated* in our Resolution dated 8 August 2000 of the administrative offense of *gross misconduct* with which he was charged. For this reason, we ordered his reinstatement.

True it is that we found him negligent in the discharge of his duties (a finding that we concede although in conscience hardly admit), but this finding would not still have called for his dismissal from the service. At the outset, had we properly characterized the offense for which he is truly responsible and thereafter justly imposed the proper penalty, he would not have suffered the dire consequences of our first decision. In granting his claim for back salaries and other economic benefits, we are thus simply repairing the damage that was unduly caused him, and unless we can turn back the hands of time, we can do so only by restoring to him that which is physically feasible to do under the circumstances. Back salaries are after all meant to recover

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[7] No. L-5127, 27 May 1953.

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from the employer that which the employee had lost by way of wages as a result of his unfounded dismissal.[8]

To be sure, it is not unprecedented to order the payment of back salaries and other economic benefits to one who has been harshly penalized for otherwise very negligible omissions. This principle is well entrenched in labor law, and there is no reason to deny civil servants of its salutary effects. After all, both are workers in our compassionate understanding of this term. Thus, in *Sampung v. Inciong*[9] we awarded full back wages to an employee who was unduly dismissed from work when the penalty of suspension was enough. Citing *Almira v. B.F. Goodrich Philippines, Inc.,*[10] we said therein that "[i]t would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. From the strictly juridical standpoint, it cannot be strongly stressed, to follow Davis in his masterly work, *Discretionary Justice*, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*."

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[8] *Santos v. NLRC*, G.R. No. 76721, 21 September 1987; *Morales v. NLRC*, G.R. No. 91501, 2 August 1990; *Torillo v. Leogardo*, G.R. No. 77205, 27 May 1991.

[9] G.R. No. 50992, 19 June 1985. See also *Mary Johnston Hospital v. NLRC*, G.R. No. 73839, 30 August 1988.

[10] No. L-34974, 25 July 1974, 58 SCRA 120, 131.

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We also cannot deny back salaries and other economic benefits on the ground that respondent Clerk of Court did not work. For the principle of "no work, no pay" does not apply when the employee himself was forced out of job. As ruled sympathetically in *University of Pangasinan Faculty Union v. University of Pangasinan,*[11] the "no work, no pay" principle does not apply where the employee is "constrained to take mandatory leave from work," and for this, Clerk of Court Villanueva, Jr. cannot altogether be faulted or begrudged for asserting and claiming that which is due him under the law. Indeed, it is not always true that back salaries are paid only when work was done. Thus in *Serrano vs. NLRC,*[12] the employer is liable for back wages when he fails to give notice to the employee before the latter is dismissed from work, regardless of fault. Back wages too are paid to an employee who is merely reinstated in the payroll under Art. 223 of the Labor Code which provides that "[i]n any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstated aspect is concerned, shall be immediately executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll x x x" For another, the poor employee could offer no work since he was forced out of work. Thus, to always require *complete exoneration* or *performance of work* would ultimately leave the dismissal uncompensated no matter how grossly disproportionate the penalty was. Clearly, it does not serve justice to simply restore the dismissed employee to his position and deny him his claim for back salaries and other economic benefits on these grounds. We would otherwise be serving justice in halves.

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[11] G.R. No. 63122, 20 February 1984. See *Prieto v. NLRC,* G.R. No. 93699, 10 September 1993; *Jackson Building Condominium Corp. v. NLRC,* G.R. No. 111515, 14 July 1995; *Triple Eight Integrated Services v. NLRC,* G.R. No. 129584, 3 December 1988; *Gandara Mill Supply v. NLRC,* G.R. No. 126703, 29 December 1998.

[12] G.R. No. 117040, 27 January 2000.

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To be sure, the act of respondent Villanueva, Jr., for which he stands charged – *failing to diligently supervise his subordinate – did not constitute gross misconduct which would have justified separation from the service*; neither was it as evil as the dishonest acts involved in the jurisprudence of old whereby the payment of back salaries would certainly be odious and insulting to the sensibilities of honest workers. What is at stake here is a simple case of *isolated oversight*, which does not call for dismissal from the service. If it were, then most civil servants would by now be rotting away for being out of work. The rule has thus been instituted that "x x x [a]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations x x x There has to be some added reason why he should examine each voucher in such detail."[13] The fact is that Clerk of Court Villanueva, Jr., like other clerks of court, is saddled with numerous documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his desk for his signature. To miss out on any one of them, after good faith reliance upon subordinates is done, would not humanly be possible to avoid. The important thing is that such omission could be easily and conveniently remedied at no expense to any party. Surely, to visit such failing with dismissal from service, or with denial of back salaries that respondent should have been receiving in the first place, is most unjust and unfair.

It is rather unfortunate that the Court in countless occasions has readily bent backwards to accommodate workers perceived to have been unduly deprived of their rights under the Labor Code. Yet this same Court is now inordinately strict with its own people to such an extent that a totally different set of rules is being applied. It must be repeatedly stressed that respondent Villanueva, Jr. was completely exonerated from the charge of *gross misconduct* hence the setting aside of the order of dismissal. What does this mean? Under Labor Laws,

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[13] *Magsuci v. Sandiganbayan,* G.R. No. 101545, 3 January 1995, 240 SCRA 13; *Arias v. Sandiganbayan*, G.R. No. 81563, 19 December 1989, 180 SCRA 309, 315-316.

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the aggrieved employee is entitled to back wages and other benefits which he should have earned if he was not terminated. The objective is to restore him as far as practicable to the same state he was in before he was unjustifiably dismissed. Should our own people in the Judiciary deserve any less? Are they several notches below the ordinary workers that they should not be given the same consideration? The oft-cited principle of "no work, no pay" invoked here should be reexamined as to its application since it smacks of arbitrariness and unconcern, given the present factual milieu.

It is interesting to note that at the time the foreclosure sale was effected the rule then prevailing, SC - AO No. 3 (19 October 1994), was that the responsibility for signing and issuing certificates of sale devolved upon the Office of the Sheriff, although subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge. This rule was subsequently amended by SC - Adm. Circ. No. 3-98 (5 February 1998) whereby the duty of signing and issuing certificates of sale still devolved upon the Office of the Sheriff, but the Clerk of Court as *Ex-Oficio Sheriff* was tasked only with the duty of receiving "a quarterly report to include all foreclosure sales he has conducted, dates of the auction sales, descriptions of the properties, sale prices, names of the highest bidders, numbers of the official receipts issued for the fees paid, and amounts paid. The Clerk of Court shall certify the report and submit the same to the Financial Management Office, Office of the Court Administrator, within fifteen (15) days after the end of each quarter," and supervise "the work of the implementing sheriffs in connection with extrajudicial foreclosures."

Significantly, the express directive to Clerks of Court to sign and issue certificates of sale came only upon the promulgation of A.M. No. 99-10-05-0 (28 December 1999) expressly amending the two (2) previous orders of this Court, *viz:*

Resolution Re: Procedure in Extra-Judicial Foreclosure of Mortgages; Administrative Circular # 3-98 of 05 February 1998 amended by Resolution AM # 99-10-05-0; Administrative Order # 3 dated October 19, 1984 amended by Resolution AM # 99-10-05-

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0; Auction Sale at least two (2) participating bidders; Extra-judicial Foreclosure of Mortgage Procedure; Foreclosure of property in different locations covering one indebtedness. -

Gentlemen:

Quoted hereunder for your information is a resolution of the Court *En Banc* dated 14 DECEMBER 1999 (A.M. No. 99-10-05-0):

PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE

In line with the responsibility of an Executive Judge under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Oficio* Sheriff, and his staff, and the issuance of commissions to notaries public and enforcement of their duties under the law, the following procedures are hereby prescribed in extrajudicial foreclosure of mortgages: x x x 2. Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to: x x x (d) sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge; and (e) after the certificate of sale has been issued to the highest bidder, keep the complete records, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which the records shall be archived x x x This Resolution amends or modifies accordingly Administrative Order No. 3 issued by then Chief Justice Enrique M. Fernando on 19 October 1984 and Administrative Circular No. 3-98 issued by the Chief Justice Andres R. Narvasa on 5 February 1998 x x x

This clear delineation of responsibility only goes to show that during all the relevant times, Clerk of Court Villanueva, Jr., might not have had in the first place the responsibility for the alleged negligent act of signing and issuing the certificate of sale without ascertaining beforehand the existence of any excess in the amount collected from the foreclosure and the amount of indebtedness. The penalty of fine therefore may not have in fact been called for under this state of responsibilities that he is to discharge. Justice dictates that all the inconvenience caused him, not the least of which is the promulgation to the

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whole world that he had been dismissed from the service, should be mended. The only rectification that can be done now is the payment of his back salaries and other economic benefits.

We can make the difference: precisely, recourse may be had to our corrective powers to avoid a right granted in law from being rendered illusory in fact. Clerk of Court Villanueva, Jr. was fined all right, but he ended up suffering suspension from work too; worse, he was deprived of his salaries and other economic benefits. We may have humored him at one end, only to fry him at the other. To stress once again, our Resolution of 8 August 2000 penalized him only with fine, and did not see it fit to include as part of his penalty his suspension from work for the period he was dismissed from the service on account of our Resolution of 29 October 1999, much less did it order the forfeiture of his salaries and other economic benefits. It behooves us to empathize with Clerk of Court Villanueva, Jr., that being out of job even for one day for an act that does not deserve such consequence is like being condemned to an eternity of distress. This is what unjust acts, after all, bring about.

Clerk of Court Ildefonso M. Villanueva, Jr., did not commit an act of dishonesty. This we are all in agreement. He may have blundered in failing to properly supervise Sheriff Nelson N. Abordaje in *one isolated incident*. We may all agree on this matter too. But one important point we probably have missed out here is the clear outpouring of support for Clerk of Court Villanueva, Jr. His steady influence upon the lives of the people in his community shows how efficient and effective a court employee he has been. If one is to name thus an epitome of the countless, faceless, nameless men and women who, with optimism, courage and fortitude have kept the judicial torch alive, even against the hostile and merciless winds, we certainly can readily refer to respondent Clerk of Court Villanueva, Jr.

It is not amiss, as it is important, to point out also that even the complainant himself, Kenneth S. Neeland, perhaps upon deep examination of his conscience, has come out openly in support of respondent Sheriff Nelson N. Abordaje's call for

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clemency. With more reason should this call of the complainant be made to affect favorably Clerk of Court Villanueva, Jr., who certainly was not the principal "offender" (if such terms be used) in the omission now sought to be punished. Significantly, the relevant personalities in Bacolod City have spoken for the integrity, efficiency and effectiveness of Clerk of Court Villanueva, Jr. We should now take time to listen to what our individual consciences for justice tell each of us.

WHEREFORE, the prayer of respondent Atty. Ildefonso M. Villanueva, Jr., Clerk of Court VI and *Ex-Oficio* Provincial Sheriff, Regional Trial Court, Bacolod City, to be paid his back salaries and other economic benefits to which he was entitled for the period of his dismissal from the service to his actual reinstatement be paid to him is *GRANTED*. The Office of the Court Administrator through the Officer-in-Charge, Financial Management Office, and all concerned are *DIRECTED* to immediately effect payment to respondent Villanueva, Jr. in accordance herewith.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and *Sandoval-Gutierrez, JJ.,* concur.

Melo, J., dissents.

MELO, *J., dissenting opinion:*

I am constrained to register my dissent to the majority opinion, penned by Mr. Justice Bellosillo, to the effect that despite being held liable for neglect of duty, respondent Villanueva Jr. is still entitled to back wages.

The facts are undisputed. For failure of Kenneth S. Neeland to settle his obligation of ₱20,000.00, Sugarland Motor Sales filed, on December 8, 1995, a request for foreclosure of chattel mortgage constituted on the Toyota sedan of Neeland. Acting upon the request, Sheriff Nelson N. Abordaje seized the Toyota sedan subject of the chattel mortgage and had the same sold

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at public auction on February 6, 1996. At the auction sale, Sugarland Motor Sales submitted the highest bid, ₱40,000.00. Sheriff Abordaje, however, failed to turn over to Neeland the excess between the obligation sought to be satisfied plus expenses of sale and the sum at which the vehicle was sold. On the date of the sale, Clerk of Court Ildefonso M. Villanueva Jr., as *ex oficio* Provincial Sheriff, issued a certificate of sale conveying the Toyota sedan to Sugarland Motor Sales. Aggrieved, Neeland filed an administrative complaint against Clerk of Court Villanueva Jr. and Sheriff Abordaje.

On October 29, 1999, the Court issued a Resolution finding both Villanueva Jr. and Abordaje guilty of gross misconduct and meting on both the penalty of dismissal from the service, with forfeiture of all leave credits and retirement benefits, if any, and with prejudice to reinstatement or re-employment in any agency, branch or instrumentality of the government, including government-owned and controlled corporations. The Resolution of the Court was immediately implemented. Acting upon a motion for reconsideration filed by respondent Villanueva Jr., the Court set aside its earlier resolution insofar as it dismissed Villanueva Jr. from the service. Instead, the Court held respondent Villanueva Jr. liable only for neglect of duty for which it imposed upon him a fine of ₱5,000.00. With the reduction in penalty from dismissal to a fine, respondent Villanueva Jr. was thus reinstated to his former position. Respondent Villanueva Jr. now asks for back salaries and other economic benefits, amounting to approximately ₱300,000.00, computed from the time of his dismissal up to his reinstatement. However, the Financial Management Service objects to the demand on the ground that respondent Villanueva Jr. was not completely exonerated of the charge against him, as well as on the principle of "no work, no pay."

The majority opinion, in agreeing with respondent Villanueva Jr.'s contention, stresses two things: *first*, that under existing rules, he is entitled to such back wages and other economic benefits; and *second*, that the grant of back wages and other economic benefits hews to moral justice.

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In holding that respondent Villanueva Jr. is entitled to back wages, the majority opinion declares that his dismissal from the service pending his motion for reconsideration was an unjust action that requires the payment of back wages as compensation therefor. In support of this contention, the majority opinion cites the cases of *Abellera vs. City of Baguio* (19 SCRA 600 [1967]) and *Tan vs. Gimenez* (107 Phil. 17 [1960]). In *Abellera*, we held that "payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, R.A. 2260) but also when the suspension is unjustified." And since the employee therein was separated from the service even before the decision of the Civil Service Commissioner became final (the employee having appealed the decision to the Civil Service Board of Appeals — and which later on reduced the penalty from removal to 2 months suspension), we held that his separation was premature and unjustified, thereby making the payment of his salaries for the period during which he was suspended from office proper.

Likewise, in *Tan vs. Gimenez*, we declared that "the decision did not become final and executory. The decision of the Civil Service Board of Appeals reversing that of the Commissioner of Civil Service and absolving the petitioner from the charge was not reversed or modified by the President. It, therefore, became the final decision on the petitioner's case. Consequently, the petitioner's removal from office was not in accordance with law; his reinstatement became a ministerial duty of the proper authority; and the payment of backsalary was merely incidental to reinstatement."

The majority opinion goes on to state that:

> To insist on denying respondent Villanueva Jr. his back salaries and other economic benefits on the ground that he has not been *completely exonerated* or that he *did not work*, is to indulge ourselves in a tyranny of concepts. To adopt such a formula would be to resort to circuitous arguments: he cannot be compensated because his dismissal was justified or because he did not work. But, for one thing, such penalty can never be justified since the facts, although they remain the same, only amount to an offense that is clearly not so

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punishable. For the record, Clerk of Court Villanueva Jr. was *completely exonerated* in our Resolution dated 8 August 2000 of the administrative offense of *gross misconduct* with which he was charged. For this reason, we ordered his reinstatement. True it is that we found him negligent in the discharge of his duties (a finding that we concede though in conscience hardly admit), but this finding would not still have called for his dismissal from the service. At the outset, had we properly characterized the offense for which he is truly responsible and thereafter justly imposed the proper penalty, he would not have suffered the dire consequences of our first decision. In granting his claim for back salaries and other economic benefits, we are thus simply repairing the damage that was unduly caused him, and unless we can turn back the hands of time, we can do so only by restoring to him that which is physically feasible to do under the circumstances. Back salaries are after all meant to recover from the employer that which the employee had lost by way of wages as a result of his unfounded dismissal.

The majority opinion engages in semantics when it declares respondent Villanueva Jr. as having been *completely exonerated* of the offense of gross misconduct, respondent being undeniably guilty of neglect of duty. The fact is, we reduced his offense from gross misconduct to simple neglect of duty not because of the lesser gravity of his offense, but because of the mitigating circumstance that his offense was the first that respondent had committed in his long years of service with the judiciary and that he had introduced various innovations in court to increase the efficiency of employees. Thus, in our August 8, 2000 Resolution we stated that "after a review of the records, we note that this is the first administrative complaint against respondent in his long years of service with the judiciary. He has also introduced various innovations in court to increase the efficiency of employees. Nevertheless, we remain convinced that respondent was remiss in his duty in this particular case. It cannot be overlooked that respondent failed to oversee the rightful turnover of the balance of the proceeds of the auction sale to the corresponding party, and more, the payment of the sheriff's commission to the court . . . However, respondent's lack of previously derogatory record may be considered in his favor. Hence, we reduce the penalty." Thereafter, we set aside the

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penalty of dismissal and fined respondent Villanueva Jr. in the amount of ₱5,000.00. It cannot, thus, be said that respondent Villanueva Jr. was *completely exonerated.*

Respondent, not having been *completely exonerated*, the *Abellera* and *Tan* cases are not in point in the case at bar. In a number of cases, starting with *Yarcia vs. City of Baguio* (33 SCRA 419 [1970]), we have held that before a public official or employee may be entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee is innocent of the charges preferred against him.

Verily, *Yarcia* is the doctrine applicable in the case at bar, being squarely in point. In *Yarcia*, plaintiff (a market collector of the City of Baguio) was administratively charged and found guilty of dishonesty, for which he was ordered dismissed. He appealed to the Civil Service Board of Appeals, which reduced the penalty from dismissal to a fine of six months' pay. He was thus reinstated, 2 years and 11 months after his dismissal. Not content to let things well alone, plaintiff filed an action for back salaries for the time of his dismissal from the service up to his actual reinstatement, pinning his hopes on *Abellera vs. City of Baguio (supra)*. In declaring Yarcia's petition to be without merit, we noted that *Abellera* was not in point and that in *Abellera* "the Court through Mr. Justice J.B.L. Reyes took care to point out that the rule on 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 this jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, Rep. Act 2260), but also when the suspension is unjustified."

In *Yarcia*, we declared that the applicable doctrine where the employee is not exonerated or found innocent of the charge and his suspension or removal from office pending appeal is lawful and not unjustified is that pronounced in *Villamor vs. Locsin* (12 SCRA 418 [1964]), where it was held that:

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. . . it will be noted also that the modified decision did not exonerate the petitioners. And if We take into account the fact that they 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 their salaries. The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As you work, so shall you earn.

The majority opinion, however, opines that to deny respondent Villanueva Jr. his back salaries while ordering him to pay a fine would, in effect, punish him twice — fining him for neglect of duty and depriving him of his salaries and benefits during his lost period of employment — allegedly an improper rollover of penalties. In *Austria vs. Auditor General* (19 SCRA 79 [1967]), cited in *Yarcia*, the Court dismissed Austria's claims for back salaries, after the Civil Service Commissioner's decision demoting him from his former position as high school principal to classroom teacher with severe reprimand and warning was affirmed by the Civil Service Board of Appeals. As to Austria's claim of being subjected to a double penalty, the Court stated "Austria contends that if he is not paid his claim for back salaries he would, in effect, be punished twice: first by his demotion; and second, by his suspension without pay. This argument is again untenable, because it erroneously assumes that he did not give ground for his suspension or that the ground existed only after the decision against him became final, and not that it had already existed when he committed the acts complained of against him by the four lady teachers." This is exactly the situation in the case at bar. Having given ground for his dismissal, respondent Villanueva Jr. may not now claim that he is being punished twice for the same offense, the rule being clear that the only public officials or employees entitled to back salaries and other economic benefits during the period when they were suspended or out of the service are those found innocent of the charge or those whose suspension is found unjustified.

This rule has been reiterated in a number of recent cases (*Bangalisan vs. CA*, 276 SCRA 619 [1997]; *Dela Cruz vs. CA*, 305 SCRA 303 [1999]; *Gloria vs. CA*, 306 SCRA 287 [1999]; *Alipat vs. CA*, 308 SCRA 781 [1999]; *Caniete vs.*

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Secretary, 333 SCRA 849 [2000]; *Acosta vs. CA,* 334 SCRA 486 [2000]; *Secretary of Education vs. CA*, G.R. No. 128559, October 4, 2000). In *Secretary of Education vs. CA*, we declared:

> This Court has likewise put to rest the issue of whether back wages may be awarded to subject public school teachers who were ordered reinstated in the service after the orders of dismissal issued by the DECS Secretary were commuted by the Civil Service Commission to suspension of six (6) months without pay. To repeat, in *Alipat vs. Court of Appeals,* in denying the teachers' claim for back wages, the Court said:
>
> > "This Court has already resolved the issue of whether back wages may be awarded to the teachers who were ordered reinstated to the service after the dismissal orders of Secretary Cariño were commuted by the Civil Service Commission to six (6) months' suspension. The issue was resolved in the negative in *Bangalisan vs. Court of Appeals* on the ground that the teachers were neither exonerated nor unjustifiably suspended. The *Bangalisan* case also ruled that the immediate implementation of the dismissal orders, being clearly sanctioned by law, was not unjustified. The Court held that as regards the payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, the payment of back wages may be decreed if 'he is found innocent of the charges which cause the suspension and when the suspension is unjustified.'
> >
> > Citing the *Bangalisan* ruling, this Court in *Jacinto vs. CA* held that when the teachers have given cause for their suspension — *i.e.*, the unjustified abandonment of classes to the prejudice of their students — they were not fully innocent of the charges against them although they were eventually found guilty only of conduct prejudicial to the best interest of the service and not grave misconduct or other offenses warranting their dismissal from service; being found liable for a lesser offense is not equivalent to exoneration."

This ruling is applicable herein. Respondent Villanueva Jr., having been found guilty of neglect of duty, must be deemed as having given cause for his dismissal. Although his dismissal from the service was later reduced to a penalty of fine, the same is not an exoneration that will entitle him to back wages and other economic benefits. Being found guilty of a lesser offense is not equivalent to exoneration.

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The majority opinion would, however, make much capital of the fact that the order dismissing respondent Villanueva Jr. was immediately enforced despite his right to file a motion for reconsideration, stating that "[w]e treated him like a judge who is *immediately thrown out* of his seat as soon as he is found guilty of gross misconduct to prevent him from committing more injustices in the bench and 'bastardizing the judiciary.' But respondent Villanueva Jr. is not a judge but a mere Clerk of Court and *Ex-Oficio* Provincial Sheriff. We emphasize that the existence of such right defeats any authority to pursue immediate execution of the Resolution. Under case law, to which we arduously adhere, his dismissal from the service pending his motion for reconsideration requires the payment of back salaries and other economic benefits to compensate for such unjust action."

It must be pointed out that in *Dela Cruz vs. CA (supra),* penned by Mr. Justice Bellosillo himself, we stated that:

> The issue of whether backwages may be awarded to teachers ordered reinstated to the service after the dismissal orders of Secretary Cariño were commuted by the CSC to six (6) months' suspension is already settled.
>
> In *Bangalisan vs. Court of Appeals* we resolved the issue in the negative on the ground that the teachers were neither exonerated nor unjustifiably suspended, two (2) circumstances necessary for the grant of back wages in administrative disciplinary cases. Like herein petitioners, those in *Bangalisan* were also teachers who participated in the 1990 mass actions for which they were dismissed by Secretary Cariño but ordered merely suspended for six (6) months by the Civil Service Commission. On a plea that the immediate implementation of the dismissal orders of Secretary Cariño was unjustified, thus warranting an award of back wages the Court said —
>
> > 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 decision shall be final

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> 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 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.

And since it was already the final dismissal orders of Secretary Cariño which were being carried out, immediate implementation even pending appeal was clearly sanctioned by the aforequoted provision of the Administrative Code of 1987. Hence, being legal, the immediate execution of the dismissal orders could not be considered unjustified.

The cases cited by petitioners to support their prayer for back salaries, namely, *Abellera vs. City of Baguio* and *Bautista vs. Peralta* being cases which involved the unjustified immediate execution of the dismissal orders of the then Civil Service Commissioner pending appeal to the Civil Service Board of Appeals are therefore not applicable to justify petitioners' prayer.

Dela Cruz vs. CA, a 1999 case, clearly recognized that when a Department Secretary confirms an order of dismissal, the same is executory even pending appeal, the rationale being that a public office is a public trust and that the continued employment of a public officer or employee who has been found guilty of a grave offense meriting dismissal entails grave risks for the state. Thus, the effectivity of an order of dismissal pending appeal is to protect public interest, the rule being that this is one of those sacrifices which a public officer must bear for the public good. However, it is precisely because a public officer or employee is penalized before his sentence is confirmed that the rules entitle him to the payment of his back salaries and other economic benefits in case of exoneration.

In the instant case, while allowing public officials and employees falling under the Executive Department to be immediately dismissed pending appeal, the majority opinion would, however, exempt officers and employees of the judiciary from being dismissed pending their right to file a motion for reconsideration. In effect, officers and employees of the judiciary would now become a privileged class of public officers, in the sense that while the Court *En Banc* has found them guilty of

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an offense meriting dismissal, they may not be dismissed pending a motion for reconsideration, a privilege not so accorded to civil servants belonging to the other branches of government.

Plainly, a situation such as this would be a grotesque perversion of moral justice — of our sense of fairness. This, we must not allow. Indeed, the obverse should be true. Court personnel should not only conform to the minimum standards set for public service; those involved in the administration of justice must live up to the *strictest* standards of honesty and integrity in the public service. Verily, the Court has consistently held that the nature of the work of those connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the judiciary (*Re: Report on the Judicial Audit Conducted in RTC, Br. 82, Odiongan Romblon*, 292 SCRA 1 [1998]). Since the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty, integrity, and uprightness. A public office is a public trust that enjoins all public officers and employees, particularly those serving in the judiciary to respond to the highest degree of dedication often even beyond personal interest (*Re: Report of Senior Chief Staff Officer Soria*, 299 SCRA 63 [1998]).

Again, the majority opinion would hold as unjust the immediate dismissal of respondent Villanueva Jr. despite his right to file a motion for reconsideration since he is a mere Clerk of Court and *Ex-Oficio* Provincial Sheriff. In *Atty. Reyes-Domingo vs. Morales*, A.M. No. P-99-1285, October 4, 2000, we declared that:

> A Clerk of Court is an essential and a ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice. A Clerk of Court's Office is the nucleus of activities both adjudicative and administrative, performing, among others, the functions of keeping the record and seal, issuing processes, entering judgments and orders and giving, upon request, certified copies from the records.

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Owing to the delicate position occupied by Clerks of Court in the judicial system, they are required to be persons of competence, honesty and probity since they are specifically imbued with the mandate of safeguarding the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records and to uphold the confidence of the public in the administration of justice.

. . . Those involved in the administration of justice must live up to the *strictest* standards of honesty and integrity in the public service, much more so Clerks of Court who play a key role in the complement of the court and, thus, can not be permitted to slacken on the job under one pretext or another.

For the above reasons, I hold that the immediate implementation of the order of dismissal of the Court *En Banc* pursuant to its original Resolution dated October 29, 1999 was legal and justified even if respondent Villanueva Jr. still had a right to file a motion for reconsideration thereof. Being justified, respondent Villanueva Jr.'s claim for back salaries and other economic benefits on the basis of the reduction in penalty from dismissal to fine must, perforce, be denied, it being plain that he was not completely exonerated of the charge filed against him.

I, therefore, vote to DENY, for lack of merit, respondent Villanueva Jr.'s claim for back salaries and other benefits.