



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 March 2021** which reads as follows:*

“G.R. No. 254939 (*Bureau of Internal Revenue v. Leoncio A. Gan-Lim, Jr.*). —After a judicious study of the case, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 30, 2020¹ Decision and October 12, 2020² Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 161140, which affirmed the Civil Service Commission’s (CSC) November 26, 2018³ Decision and May 6, 2019⁴ Resolution nullifying Leoncio A. Gan-Lim, Jr.’s (Leoncio) preventive suspension for ninety (90) days.

First, the CA had no list of accredited couriers yet when the Bureau of Internal Revenue (BIR) filed its motion for reconsideration. It is to be noted that Administrative Order No. 242-A-2020, providing for the guidelines on the accreditation of courier service providers in view of the 2019 Rules of Civil Procedure⁵, took effect only on October 1, 2020. Relevantly, under the old Rules of Court, filing *via* private couriers is not recognized but also not prohibited. However, it is established in jurisprudence that the date of actual receipt of pleadings by the court is deemed the date of filing of such pleadings, and not the date of delivery thereof to a private letter-forwarding agency.⁶ Since there are no accredited couriers when the BIR filed its motion, the date of receipt by the CA shall be considered as the date of mailing. Thus, the CA

¹ *Rollo*, pp. 40-56; penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Marlene B. Gonzales-Sison and Ruben Reynaldo G. Roxas.

² *Id.* at 58-60.

³ *Id.* at 76-86; penned by Commissioner Leopoldo Roberto W. Valderosa, Jr., with the concurrence of Commissioner Alicia dela Rosa-Bala, Chairperson.

⁴ *Id.* at 108-112.

⁵ A.M. No. 19-10-20-SC (Resolution) dated October 15, 2019 took effect on May 1, 2020.

⁶ *Tecson v. Prestado-Tecson*, G.R. No. 208245 (Notice), July 30, 2019.

properly denied the BIR's motion for reconsideration for being filed out of time.

Second, the rule on non-delegation of the BIR Commissioner's power to discipline BIR employees under Section 30,⁷ Chapter 6, Book IV of Executive Order No. 292⁸ does not include the delegation of the power to issue formal charges and preventive suspension orders, which are merely part of the investigation process. We stressed this in *Quimbo v. Acting Ombudsman Gervacio*⁹ where we held:

Jurisprudential law establishes a clear-cut distinction between suspension *as preventive measure* and suspension *as penalty*. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.

SEC. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.

Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. So Section 25 of the same Rule XIV provides:

SEC. 25. The period within which a public officer or employee charged is placed under preventive suspension shall not be considered part of the actual penalty of suspension imposed upon the employee found guilty.

Clearly, service of the preventive suspension cannot be credited as service of penalty. To rule otherwise is to disregard above-quoted Sections 24 and 25 of the Administrative Code of 1987 and render nugatory the substantial distinction between, and purposes of imposing preventive

⁷ SEC. 30. Authority to Appoint and Discipline. — The head of bureau or office shall appoint personnel to all positions in his bureau or office, in accordance with law. In the case of the line bureau or office, the head shall also appoint the second level personnel of the regional offices, unless such power has been delegated. He shall have the authority to discipline employees in accordance with the Civil Service Law.

⁸ ADMINISTRATIVE CODE of 1987, July 25, 1987.

⁹ 503 Phil. 886 (2005).

suspension and suspension as penalty.¹⁰ (Emphases supplied and citations omitted.)

Therefore, we find that BIR Commissioner Henares did not unduly delegate his power to discipline BIR employees, in particular Leoncio, to Deputy Commissioner Estela V. Sales under Revenue Administrative Order No. 1-2002.¹¹

Third, at any rate, we rule against the validity of the Preventive Suspension Order. The CA observed that while the BIR did not serve the Formal Charge and Preventive Suspension Order to Leoncio in 2013, it readily admitted that it withheld Leoncio's salaries for 90 days equivalent to the period of suspension under the Preventive Suspension Order. Indeed, the Preventive Suspension Order was effectively enforced without the requisite formal charge. In *Trade and Investment Development Corp. of the Philippines v. Manalang-Demigillo*,¹² we enumerated two conditions before an order of preventive suspension pending an investigation may validly issue, namely: (1) **that the proper disciplining authority has served a formal charge to the affected officer or employee**; and (2) that the charge involves either dishonesty, oppression, grave misconduct, neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of the charges which would warrant her removal from the service. Section 29¹³ of the Revised Rules on Administrative Cases in the Civil Service¹⁴ considers an order of preventive suspension issued without a formal charge as covered by the phrase "null and void on its face" in relation to the payment of back salaries to the affected employee. Accordingly, Leoncio is entitled to back salaries corresponding to the period of 90 days preventive suspension.

Finally, the Court clarified in A.M. No. 17-12-09-SC, dated January 10, 2018, that Sheriff's Trust Fund (STF) is not part of the filing fees and that there is a need to collect the amount of ₱1,000.00 from those who are listed as exempted from the payment of filing fees. STF should be collected from

¹⁰ *Id.* at 891-892.

¹¹ Delegation of Authority to Sign Documents and Correspondence from Divisions under Inspection Service, June 14, 2002.

¹² 695 Phil. 152 (2012), emphasis supplied.

¹³ **SEC. 29. Payment of Back Salaries During Preventive Suspension.** — The payment of back salaries during the period of suspension shall be governed by the following:

a. A declaration by the Commission that an order of preventive suspension is null and void on its face entitles the respondent official or employee to immediate reinstatement and payment of back salaries corresponding to the period of the unlawful preventive suspension without awaiting the outcome of the main case.

The phrase "**null and void on its face**" in relation to a preventive suspension order, imports any of the following circumstances:

i) The order was issued by one who is not authorized by law;

ii) The order was not premised on any of the conditions under Section 26 (A and B) of this Rule;

iii) The order of preventive suspension was issued without a formal charge or notice of charges;

iv) While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

¹⁴ CSC Resolution No. 1101502, November 8, 2011.

government agencies and from those exempt from the payment of filing fees.¹⁵ Hence, the BIR is ordered to comply with this Court's Resolution dated February 1, 2021¹⁶ on the payment of ₱1,000.00 for STF pursuant to A.M. No. 17-12-09-SC.

FOR THESE REASONS, the petition is **DENIED**. The July 30, 2020 Decision and October 12, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 161140 are **AFFIRMED**.

The Bureau of Internal Revenue is **ORDERED TO PAY ₱1,000.00** for STF pursuant to A.M. No. 17-12-09-SC and **TO COMPLY** with our Resolution dated February 1, 2021.

SO ORDERED." (*Rosario, J., on leave*).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *Utah*

01 JUL 2021

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¹⁵ *The Department of Finance-Revenue Integrity Protection Service (DOF-RIPS) v. Enerio*, G.R. No. 238630 (Notice), October 10, 2018.

¹⁶ *Rollo*, pp. 10-11.

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

CIVIL SERVICE COMMISSION (reg)
Constitution Hills, Batasang Pambansa Complex
Diliman, 1126 Quezon City
(Case No. 180635)

LEONCIO A. GAN-LIM, JR. (reg)
Respondent
No. 25 Las Villas Del Cielo
Morning Star Drive, Culiati
1100 Quezon City

JUDGMENT DIVISION (x)
Supreme Court, Manila

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PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 161140

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