

96 Phil. 545

[G.R. No. L-8408. February 17, 1955]

JOSEFINA A. GOROSPE, ACTING CITY HEALTH OFFICER OF BAGUIO , ALFONSO TABORA, CITY MAYOR OF BAGUIO, AND DOMINGO CABALI, ACTING CITY TREASURER OF BAGUIO, PETITIONERS, VS. HONORABLE JESUS DE VEYRA, JUDGE OF THE COURT OF FIRST INSTANCE OF THE CITY OF BAGUIO, AND ANDRES A. ANGARA, RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This petition for a writ of certiorari was filed to set aside an order of preliminary injunction issued by the Court of First Instance of Baguio in the *quo warranto* proceedings instituted in said Court (Case No. 465), by respondent Dr. Andres A. Angara, against petitioner herein Josefina A. Gorospe.

It appears that respondent Dr. Andres Angara was appointed the City Health Officer of the City of Baguio, and his appointment was confirmed on April 29, 1947. While discharging his duties as such, said respondent applied on October 21, 1950, and was granted, on May 15, 1953, a PHILCUSA-FOA (MSA) training grant to study and specialize in the United States. He signed a Training Grant Agreement to conform to all rules and regulations prescribed by the Philippine Council for United States Aid and Foreign Operations Administration, and to render upon his return no less than 2 years' service to the Government of the Republic of the Philippines for every year of training abroad. Thereafter, respondent Angara left for the United States, and vacated temporarily his post as City Health Officer of Baguio; and the petitioner Dr. Josefina Gorospe, Medical Officer of the Baguio Health Department, was designated Acting City Health Officer of Baguio.

Dr. Angara returned to the Islands on August 26, 1954. Before his arrival on

August 10, 1954, the United States Foreign Operation Mission to the Philippines (FOA) sent, to the Secretary of Health a "justification" regarding assignments of the trainees under the grant, in order to make "the best use of the special training" they had received. With particular reference to respondent Angara, the "justification" stated that "he is well equipped to act as Technical Assistant to the Department of Health in all matters relating to Tuberculosis." (Petition, Annexes G and H). Pursuant to this recommendation, Dr. Angara upon his return was verbally instructed by the Secretary of Health not to reassume the office of City Health Officer of Baguio, to take a week's vacation leave, and to await assignment under the PHILCUSA-FOA agreement. Respondent was appraised of the recommendation made in his case, and he objected to the same; then, contrary to instructions, he returned to Baguio and took over the office from petitioner Gorospe who, unaware of the instructions of the Secretary of Health, raised no objection.

On September 14, 1954, the Mayor of Baguio, after a telephone conversation with the Secretary of Health and receipt of a telegram that Dr. Angara had been instructed not to assume his old position and that the Department of Health contended Dr. Gorospe was still acting City Health Officer, informed Dr. Angara that the salary as City Health Officer would be paid to Dr. Gorospe, and suggested that the matter be taken up with the Secretary.

Summoned to Manila for a conference, Dr. Angara directed petitioner Dr. Gorospe to take up routine matters in his absence. But Dr. Gorospe, under the authority of the Secretary, reassumed office as Acting City Health Officer and issued a memorandum to the personnel of the City Health Department to that effect.

In Manila, the Secretary of Health advised respondent on September 17, 1954, that he would be given a position as Technical Assistant to the Department of Health (Answer, p. 55) and on the same day, Department Order No. 167, s. 1954, was issued, whereby respondent Dr. Angara

*** is hereby detailed effective immediately to the Division of Tuberculosis, Department of Health, to assist the chief of the Division in the planning, organization and implementation of the activities provided for under

Republic Act No. 1136. This detail shall continue until further orders.”

Evidently laboring under the impression that he had been ousted from the post of City Health Officer of Baguio, respondent Angara returned thither and on September 20, 1954 commenced *quo warranto* proceedings against petitioner Gorospe, the Mayor, the Treasurer, and the Auditor of the City of Baguio, alleging usurpation by petitioner of the functions of the office of City Health Officer, and praying for the issuance of a preliminary writ of injunction. The answer opposed the preliminary injunction and pleaded Dr Angara’s detail under Department Order No. 167, previously quoted; Dr. Angara’s PHILCUSA-FOA fellowship contract; that Dr. Gorospe in discharging the duties of Acting City Health Officer of Baguio was merely obeying the lawful orders of the Secretary of Health; and that the latter was not a party to the proceedings.

On October 11, 1954, the respondent Judge granted a preliminary writ of injunction upon the filing of a bond for P3,000; and a motion to reconsider this order having been denied, petitioner Gorospe resorted to this Court, which ordered a stay of the proceedings.

It is plain from the text of the Department Order No. 167, Series 1954, that respondent Dr. Angara has not been suspended, removed or ousted from his position as City Health Officer of Baguio, but was merely detailed to serve temporarily in Manila, in the Division of Tuberculosis, Department of Health, as Technical Assistant therein. Such being the case, our decisions in *Santos vs. Mallare*, (48 Off. Gaz., (5) 1787) ; *Jover vs. Borra*, (49 Off. Gaz., (7) 2765), *Lacson vs. Romero*, (47 Off. Gaz., 1778-); and *Lacson vs. Roque*, (49 Off. Gaz., (1) 93) are not applicable. The detail of respondent Dr. Angara, under Department of Health Order No. 167, is a mere temporary arrangement which does not have, and is not intended to have the effect of removing or suspending said respondent from the position he now holds. Said detail, moreover, is supported by the contractual commitments assumed by said respondent under the Training Grant Agreement that he voluntarily signed, promising to render not less than two years service to the Government of the Republic of the Philippines upon his return from training abroad.

The provision in the order in question, that respondent Angara's detail "shall continue until further orders", can not be construed as an indefinite assignment, since respondent's contract to serve the Government of the Republic limits his service to two years and not more. Hence, the phrase adverted to is to be understood as merely referring to the particular detail to the Tuberculosis Division, and not to the duration thereof.

Considerable effort is made for the respondent Dr. Angara to show that his detail to the Tuberculosis Division is not in line with the special training he has received under the grant. Assuming that this is a matter that could properly be determined in these proceedings, it should be enough to point out that the agreement subscribed by said respondent (Petition, Annex F) does not authorize him to insist that his own discretion or judgment should override that of his hierarchical superior, the Secretary of Health. The revised "Memorandum to the Agencies of the Philippine Government for the Sending of Filipino Technicians abroad under the ECA "Technical Assistance Programme" attached to said respondent's answer as its Annex 2, and which he admits to set forth the conditions applicable to his application for specialized training, (Answer, par. 7) contains the following provisions:

"8. Obligations undertaken by participants and by the Government.—Each participant chosen within the government service is required to sign an agreement in which, among other things, he binds himself to render not less than two years' service to the Government of the Republic of the Philippines upon his return, for every year of training abroad, any period of training, study, or observation being computed as a minimum of one year for this purpose. The government undertakes to restore the participant to the position most advantageous to the government upon the completion of his training abroad."

What position should be deemed "most advantageous to the government" for the respondent to occupy is a question to be decided by the representatives of the government, and not by respondent Dr. Angara. Respondent's opinion as to his qualifications and capacity may not necessarily coincide with that of the government's representatives, and in such event, the decision of the latter

must control, since the object is to attain the maximum benefit for the government itself, not for the respondent. Even if a party were a reliable *judex in sua causa*, the government can not be denied the right to determine, experimentally or otherwise, in what position it could make use of respondent's services to the best advantage of the service and of the public. Be that as it may, the undertaking to place the respondent in the position most advantageous to the government for "the best use of the special training" received by him necessarily carries with it the duty of respondent Dr. Angara to comply with such assignment, even if it does not suit his personal ideas or convenience. If the government's undertaking was a duty on its part, respondent had no right to prevent the discharge of such duty.

Respondent Dr. Angara has not shown, directly or indirectly, that his detail to the Tuberculosis Division was in any way due to improper motives or purposes, or that it was made in abuse of discretion or would subject him to indignity or humiliation, or is otherwise incompatible with his obligations under the Training Agreement. The undeniable importance of tuberculosis control for the country at large sufficiently justifies the detail, specially since it is in line with the recommendation of the authorities who exercised supervision of the training grants. It is not amiss here to call attention to section 951 of the Revised Administrative Code:

"Sec. 951. *Command of services of medical employees in general*—
Subject to the approval of the proper head of Department, the Director of Health may require the services, without additional compensation, of any medical officer or employee in the Government service."

And if the Director of Health can exercise this power, *a fortiori*, his superior, the Secretary of Health, may do so, and call upon respondent to serve.

We have held in *Rodriguez vs. Del Rosario*,^[*] 49 Off. Gaz. (No. 12) p. 5427, that a public officer designated temporarily to act as technical assistant has the right to renounce such designation and return to his official post. Said ruling does not apply to the case of the respondent Dr. Angara, because the latter, by his training agreement, has consented to submit for two years to the designation

made by the proper government representatives. His claim that the agreement is void in so far as it binds him to serve away from the city of Baguio is untenable, for petitioner is now in estoppel to urge the nullity of his training agreement after having taken advantage thereof. It appears neither fit nor seemly that this respondent, after voluntarily applying for and obtaining special training advantages upon his promise to serve the national government for two years upon his return, should now endeavor to repudiate those very promises in consideration whereof he was granted and received the advantages he now enjoys. It is well to note in this connection that the City of Baguio is not complaining against the temporary loss of respondent's services; in truth, its authorities were made by him defendant in the *quo warranto* proceedings interposed against Dr. Gorospe.

We can not agree that respondent's training contract is against public policy in so far as it authorizes the Department of Health to detail him to another position. Public policy requires, as we have repeatedly held, that officials in the classified or unclassified civil service be not removed, suspended or indefinitely transferred except *with their consent* or for sufficient cause. But this rule aims primarily to protect the tenure of public officials, to guard them from pressure or imposition, and they may voluntarily relinquish the protection, at least for a limited period, as this respondent has done through his training agreement. "There is no sanctity in such a claim of constitutional right as prevents its being waived as any other claim of right may be" (*Wall vs. Parrot Silver & Copper Co.*, 244 U. S. 407, 61 L. Ed. 1229). "A person may, by his act or omission to act, waive a right he might otherwise have under the Constitution". (*Pierce vs. Somerset Railway* 171 U. S. 641, 43 L. Ed. 317).

It follows from all the foregoing that the detail made by Health Department Order No. 167, Series 1954, was valid and in consonance with the terms of the agreement voluntarily executed by the respondent Dr. Angara, and that the temporary occupancy of his position, in an acting capacity, by petitioner Dr. Gorospe, did not constitute usurpation or unlawful withholding of the office of City Health Officer of Baguio. As all the essential facts were laid before the respondent Judge (as evidenced by the copies of the pleadings in the *quo warranto* case in the Court below) and it could not be hidden from him that no *prima facie* case of *quo warranto* existed; that the case

involved the validity of the Department Order No. 167, and that, therefore, the issuance of a writ of preliminary injunction practically nullified said order without the Department Secretary being made a party, and being given a chance to be heard, we have arrived at the conclusion that the issuance of said writ was done in grave abuse of discretion.

In conclusion, we hold: (1) that a temporary detail of a public officer in the civil service to another position, pursuant to contract voluntarily entered into by the officer, is neither a removal, suspension, or transfer in violation of the Constitution, in the absence of showing of manifest abuse of discretion or that the detail is due to some improper motive or purpose; (2) that subject to the same restrictions, where the government undertakes to place the officer upon completion of his special training abroad to the position most advantageous to the government, the selection of the position is in the discretion of the government representatives; and (3) that where the pleadings and facts before the Court of First Instance disclose no *prima facie* case for *quo warranto*, and all the proper parties are not before the Court, a preliminary writ of injunction restraining the respondent from discharging the duties of the office is improper, as issued in abuse of discretion and excess of jurisdiction.

Wherefore, the writ of certiorari prayed for is granted, and the writ of preliminary injunction issued by the Court of First Instance of Baguio in its Civil Case No. 465 is annulled and set aside, with costs against respondent Dr. Andres A. Angara.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

^[*] 93 Phil., 1070.

DISSENTING OPINION

MONTEMAYOR, J., *dissenting:*

I regret my inability to agree to the interpretation given by the majority to paragraph 8 of the training grant agreement signed by respondent Dr. Angara before he left for the United States for study under a PHILCUSA-FOA (MSA) training grant. For purposes of reference I am reproducing that portion of the training grant agreement, to wit:

“8. Obligations undertaken by participants and by the Government.—Each participant chosen within the government service is required to sign an agreement in which, among other things, he binds himself to render not less than two years service to the Government of the Republic of the Philippines upon his return, for every year of training abroad, any period of training, study, or observation being computed as a minimum of one year for this purpose. The government undertakes to restore the participant to the position most advantageous to the government upon the completion of his training abroad.”

The facts in the case are correctly stated in the majority opinion, namely, that respondent Dr. Angara was in the year 1950 a duly appointed City Health Officer of the City of Baguio; that he applied for and was later granted in 1953 a training grant by the PHILCUSA-FOA (MSA) to study and specialize in the United States; that he signed the training grant agreement, paragraph 8 of which is reproduced above, to conform to all rules and regulations prescribed by the Philippine Council for United States Aid and Foreign Operations Administration, and to render upon his return no less than two years' service to the Government of the Republic of the Philippines for every year of training abroad; that thereafter Angara left for the United States and *temporarily vacated* his post as City Health Officer of Baguio and that Dr. Josefina Gorospe, a Medical Officer in the Baguio Health Department was designated Acting City Health Officer of Baguio; that upon Angara's return he took over his old office of City Health Officer of Baguio from Dr. Gorospe; that the Secretary of Health objected to his returning to his old post and issued Department Order No. 167 detailing him, until further orders, with the Division of Tuberculosis, Department of Health, in Manila; that Angara declined that detail because he wanted to stay in his old post in Baguio and he commenced quo warranto proceedings against Dr. Gorospe and obtained an order of preliminary injunction

from the Court of First Instance of Baguio, which the majority now annuls and sets aside as having been improperly issued.

The theory of the majority is that in signing the training grant agreement and in taking advantage of the PHILCUSA-FOA (MSA) training grant to study in the United States, respondent Angara bound himself upon his return to the Philippines to render not less than 2 years service to the Government of the Republic of the Philippines for every years' training abroad, in any capacity, position, or department that the Government chooses to detail him, although the majority admits that under the doctrine laid down by this Court in several cases, among them those of *Lacson vs. Romero*, 47 Off. Gaz., 1778, and *Santos vs. Mallari*, 48 Off. Gaz., (5) p. 1787, and *Rodriguez vs. Del Rosario*, 49 Off. Gaz., No. 12 p. 5427, a civil service employee like respondent Angara may not be removed, transferred, or detailed to another place or position without his consent.

It is well to remember that Dr. Angara in signing the training grant agreement and in going to the United States to study, never vacated his post as City Health Officer of Baguio. The majority opinion itself says that in going to the United States Angara merely vacated temporarily said post. Consequently unless he had bound himself upon his return to the Philippines to accept any transfer or detail to another post, in any place, he had every right to go back to his old post in Baguio. It is true that he undertook to render not less than 2 year's service in the Government for every one year training abroad, but said service of two years could well be rendered in his old post because it is just the same service to the Government.

Let us now examine section 8 of the training grant agreement and see whether as claimed by the majority, the respondent had undertaken or had obligated himself upon his return to the Philippines to be transferred or detailed from his post in Baguio to another place; in other words, whether or not he had signed away his right to resume his old post upon his return to the Philippines. The majority evidently banks on the last sentence of paragraph 8 which reads:

“* * * The government undertakes to restore the participant to the position most advantageous to the government upon the completion of his training

abroad.”

It will be seen that the whole question depends upon the meaning and interpretation of the word “undertakes”. In my opinion, in that sentence above reproduced, the Government merely promised or obligated itself to do something. It is not a right for but rather an obligation of the Government. According to Webster’s New International Dictionary, the word Undertake means “to take upon oneself solemnly or expressly; to lay oneself under obligation * * * to guarantee, promise * * * to enter into an engagement * * * to pledge * * * to give a promise or guaranty or assume responsibility”. In none of these definitions is there any idea of right; rather there is every idea of obligation or promise. The very sub-heading of paragraph 8—“*Obligations undertaken by participants and by the Government,*” the very word “obligation” is used. As already stated, all that Angara promised and undertook is that upon his return to the Philippines he would render service to the Government 2 years for every year of training abroad. That, he was willing and ready to perform—he assumed his old post in Baguio and was prepared to render service to the Government. He never promised to render said service in any other capacity, position, or detail away from and other than his old post. If the last sentence of paragraph 8 had said that the Government *reserves* the right to transfer or detail the participant (Angara) to the position most advantageous to the Government because of his special training abroad, it would be different because that reservation would mean a *right*, far different from the *obligation* assumed by the Government, as the sentence is actually worded.

Supposing that the detail now being imposed by the Government, instead of being in Manila, were in some far off isolated place like Batanes which would be quite unpleasant, inconvenient, and undesirable to the respondent and wholly unsuitable to his health because he and his family had been accustomed to the climate of Baguio? Under the theory of the majority he would have to accept the detail anyway whether he liked it or not, whether it would mean separation from his family or whether his health would suffer by it; or else resign and answer for any penalty or damages the Government may impose upon him, and all and only because he promised before his going to the United States to serve the Government 2 years for every one year of training abroad. If that were the correct interpretation of the undertaking made by any government official or

employee who is sent abroad, then this arrangement or scheme would be a good and expedient way of transferring or even removing government officials and employees because upon their return to the Islands after their training abroad, they could be detailed to a post so undesirable and so inconvenient that there is no recourse or alternative left to the employee but to resign.

It should be remembered that when a person accepts a government position, the duties thereof and the place of station are important considerations to be taken into account. Perhaps, respondent Angara in accepting his original position in Baguio, considered that place for purposes of residence as desirable and suitable to his health and that of his family. According to our rulings already stated, except for cause he may not be transferred or detailed from that place without his consent. Here, he is being detailed away from Baguio against his consent just because he promised, upon his return, to render service to the Government, without specifying where. Without such specification, it is to be presumed that that service would be rendered in his old post in Baguio. The undertaking and promise made by the Government to restore him to a position most advantageous to the Government, as I have already stated, is not a right but an obligation, a guarantee or pledge which is up to the participant (respondent Angara) to enforce or not. The distinction between an obligation and a right is too clear to require explanation. If the government in giving a government official or employee a chance to study abroad desires and intends to detail him upon his return to any position, place, department or capacity it chooses, it should make that point clear in the contract or grant agreement so that those accepting the grant may know and decide whether or not to accept the grant.

It may be that respondent Angara in accepting the grant, in taking advantage of it and in making special studies abroad is morally obliged upon his return to the Philippines to render service to the Government in any capacity chosen by the latter, where he could make use of his special training; but here we are speaking and treating not of a moral obligation but a legal obligation. I want to give force and substance to the rule and doctrine laid down by this Court, protecting civil service officials and employees from being transferred or detailed away from their posts against their will, unless they themselves have previously and clearly consented to said transfer or detail.

I believe that the writ of preliminary injunction granted by the lower court

was properly issued.

For the foregoing reasons, I dissent.

Writ granted.

Date created: October 09, 2014