101 Phil. 79

[G. R. No. L-9230. April 23, 1957]

ANDRES A. ANGARA, PETITIONER, VS. DRA. JOSEFINA A. GOROSPE, ALFONSO TABORA, IN HIS CAPACITY AS MAYOR OF THE CITY OF BAGUIO; DOMINGO CABALI, IN HIS CAPACITY AS TREASURER OF THE CITY OF BAGUIO; AND MAUKO M. MIRANDA, IN HIS CAPACITY AS CITY AUDITOR OF THE CITY OF BAGUIO, RESPONDENTS.

D E C I S I O N

FELIX, J.:

Antecedents.—On application of Dr. Andres A. Angara dated January 24, 1946, wherein he stated "that he was willing to go anywhere and accept any assignment that the health authorities shall designate, and once inside the service he shall not hesitate to be transferred from one station to another whenever the exigencies of the service so demand", the petitioner was on October 25, 1946, appointed *ad interim* as City Health Officer of Baguio (Article VII, section 10, paragraph 4 of the Constitution of the Philippines; section 2545 of the Revised Administrative Code and Annex A), and entered upon the performance of his duties as such on December 3, 1946 (Annex B). Said *ad interim* appointment was submitted to the Commission of Appointments of Congress and was duly confirmed by this Body on April 29, 1947 (Annex C). Since petitioner's assumption of office he continuously and without interruption discharged the functions and performed the duties of City Health Officer of the City of Baguio until August 23, 1953, when petitioner, with previous approval of the Cabinet and with the consent of the City Council of Baguio, left for the United States to undertake further studies in public health administration in connection with his said position, the City of Baguio paying his monthly salary of city health officer of that city during his stay in the United States.

Petitioner's departure from the Philippines to study abroad was in connection with his application and acceptance of a fellowship in the PHILCUSA-FOA training program and after signing PHILCUSA-FOA (MSA) training grant agreement, wherein he expressed his conformity to abide by all rules and regulations of the institutions to which he may be

assigned for study, training and/or observation, and to conform to such other rules and regulations as may be prescribed by the PHILCUSA-FOA, among which were: (a) the obligation 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, and (6) the proviso that "the Government undertakes to restore *the participant to the position most advantageous to the Government upon the completion of his training abroad.*

In iew of petitioner's absence from the Philippines the President designated Dra. Josefina A. Gorospe as acting City Health Officer of Eaguio, said designation to continue only during the absence abroad of the regular incumbent of the position (Annex D). In virtue of this designation respondent Josefina A. Gorospe took her oath of office as acting City Health Officer of Baguio on January 29, 1954 (Annex D-l) and started to perform the duties inherent thereto.

On August 26, 1954, petitioner arrived from the United States and reported to the office of the Secretary of Health who advised him to take vacation leave for one week, at the expiration of which petitioner wrote a letter to the Secretary of Health, dated September 7, 1954, informing him of his anxiety and decision to report to duty immediately as City Health Officer of Baguio (Annex E), and three days later, or on September 10, 1954, he resumed his old position.

On September 14, 1954, petitioner received a telegram from Dr. J. Nolasco, Executive Officer of the Bureau of Health, calling him for a conference in Manila. He, there-fore, came to Manila and conferred with Dr. Nolasco, the Director of Health and the Secretary of Health, but before leaving Baguio he left written instructions to respondent Dra. Josefina A. Gorospe to take charge of the office during his absence (Annex F), Petitioner must have been informed by the health authorities in Manila that in consonance with the recommendation of Dr. Horace DeLien, Chief, Health and Sanitation Division, U. S. Operations Mission to the Philippines, he had been detailed to the Division of Tuberculosis to assist in the implementation of Act No. 1136 extending TB programs to the rural areas, and apparently petitioner was not willing to accept this job. So he returned to the City of Baguio on September 18,-1954, but upon arrival there he received a letter dated.

> "Secretary Paulino Garcia, in a long distance telephone this morning talked to me that as far as the Department of Health is concerned Dra. Josefina A. Goroapo is

> the City Health Officer of Baguio. I was made to understand that the Department of Health has a program to accomplish and that your services in that line are desired. * * *. I was also requested to take measures and to inform the City Treasurer that your salary should not be paid by the City of Baguio; on the other hand, the salary of the City Health Officer will be paid to Dra. Gorospe as City Health Officer"

On that same day, September 14, 1954, Mayor Tabora also sent to Assistant Executive Secretary Mr. Enrique C. Quema a letter wherein the Mayor confirmed the report regarding the status of Dr. Andres A. Angara and Dra. Josefina A. Gorospe, the latter having been recognized as the City Health Officer of Baguio by the Secretary of Health, and informing him of the instructions he had given to the City Treasurer and the City Auditor that as far as.the City of Baguio is concerned Dra. Gorospe is the City Health Officer (Annex H).

Consequently and despite demands from the petitioner, respondent Dra. Josefina A. Gorospe refused to surrender to him the office of Health Officer of the City of Baguio, notwithstanding petitioner's contention that upon petitioner's return to duty on September 10, 1954, respondent Dra. Josefina A. Gorospe automatically ceased as acting City Health Officer and that *her designation (Annex D) became functus offido and either ipso facto or* ipso jure became useless and without any further legal force and effect.

The case.—In view of this situation and predicated on most of the facts mentioned in the antecedents, on September 20, 1954 Dr. Andres A. Angara instituted *Quo Warranto* proceedings in the Court of First Instance of the City of Baguio praying in the petition:

1. That a writ if preliminary injunction be issued enjoining and retraining: (a) respondent Dra. JosefinaA. Garospe from furtherperforming the functions of the City Health Officer until further orders of the Court; and (b) respondent City Mayor Alfonso Tabora, City Treasurer Domingo Cabali and City Auditor Mauro M. Miranda of Baguio from further recognizing respondent Dra. Josefina A. Garospe as City Health of Baguio and to further commad them to recognize petitioner Andres A. Angara as the City Health Officer and to pay his monthly salary until further notice
2. That after the due hearing judgment be rendered: (a) recognizing the petitioner's right to continue discharging the duties and functions of the City Health Officer of Baguio;, declaringg respondent Dra. Josefina A

Garospe guilty of usurpation, of unlawfully withholding the office of the City Health Officer from petitioner and og illegaly exercising the duties and functions of the said office; and (c) ordering respondent Dra. Josefina A. Garospe's exclusion from said officeand to surrender herein petitioner any and all records and papers appearing to said office that might come to her possession.

3. That petitioner be granted such other and further remedy which the Court may deem just and equitable in the premises, such as the speedy determination of the matter, and senticing respondent Gorospe to pay the costs.

Respondent failed their respective answer to the petition. They opposed the issuance of a writ of preliminary injunction and prayed for the dismissal of the case with costs against the petitioner, respondent Gorospe further praying; (1) that the petitioner be ordered to comply with Department Order No. 167 issued by the Secretary of Health; and (2) that petitioner be sentenced to pay respondent Gorospe the sum of P5,000 by way of attorney's fees and litigation expenses. On October 11, 1954, the Locer Court provided that " upon the filing of the bond in the sum of P3,000, the writ of preliminary injunction prayed for be issued, and that pending the final disposition of the case petitioner Andres Angara be paid his monthly salary until further order from the court. Petitioner filed the bond required from him, but the writ of preliminary injunction could not be executed because the respondents instituted in this Court a case of certiorari with preliminary injunction againts Judge Jesus de Veyra and Andres A. Angara (G. R. No. L-8408), and this Court issued on October 29, 1954, a writ of preliminary injunction commanding the respondent Judge to set aside the writ of preliminary injunction issued by him in Civil Case 465 (Angara vs. Gorospe et al.), which command the respondent Judge obeyed on the same date. Subsequently (November 15, 1954), the hearing of the *Quo Warranto* case (No. 465) was postponed until final disposition of the certiorari case (G. R. L.-8408) that was pending before Us and which this Court, through Mr. Justice J. B. L. Reyes, decided on February 17, 1955 (51 Off. Gaz., No. 2, p. 692), granting the writ of certiorari prayed for and setting aside the writ of preliminary injunction issued by the Court of First Instance of Baguio in its Civil Case No. 465, with costs against respondent Dr. Andres A. Angara.

In view of said result respondents moved for the dismissal of the *Quo Warranto* petition inasmuch as this Court held:

> "That the detail made by the Health Department Order No. 167, s. 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 warrartto* case in the court below) and it could not be hidden from him that no prima facie case of *quo warranto* existed." (Gorospe et al. us. Judge de Veyra et al., G. B. No. L-8408—February 17, 1955).

The respondents further prayed that Dra. Josefina A. Gorospe's counterclaim and/or cross-petition for attorney's fees and litigation expenses before the lower Court and in the Supreme Court in the sum of P5,000 which she was obliged to incur as a result oi the unfounded litigation forced upon her by petitioner, be set for hearing and reception of evidence. In this connection respondent Gorospe submitted a supplement to her counterclaim and/or cross-petition.

On the other hand, petitioner in his motion oi April 13, 1955, informed the Court that in view of the pronouncement of the Supreme Court in said certiorari case, he complied with Department Order No. 167 on February 20, 1955 (Annex A of the motion), but inasmuch as the petitioner was the recognized City Health Officer of Baguio from which position he had not been removed or suspended, he prayed the Court to pass upon the remaining issue relative to the payment of his salary as City Health Officer of Baguio during the time he was in effect enjoined not to perform his duties as such.

After hearing of these motions of the petitioner and the respondents, the Court on May 16, 1955, ruled as follows:

> "(1) These (Quo Warranto) proceedings are, therefore, dismissed; (2) the counterclaim of respondent (Gorospe) is also dismissed; and (3) respondent city officials are ordered to pay petitioner his salary accrued during1 the pendency of this case."

From this order the respondents appealed to this Court, as follows: Dra. Josefina Gorospe from ruling No. 2 and respondent officials of the City of Baguio from ruling No. 3 thereof. In

this instance the respondent city officials failed to submit their brief, even long after Dra. A. Gorospe had filed hers, so petitioner moved that in consonance with section l(e), Kule 52, in relation to section 1, Rule 58 of the Rules of Court, the appeal bf said respondent City of Baguio officials be dismissed. In answer to this motion said officials filed their "Manifestation" wherein their counsel states that they were no longer filing a brief separate from that filed by respondent-appellant Josefina A. Gorospe, for the reason that all the respondents-appellants in this case had been represented in the lower court by the same counsel who has already filed a brief in connection with their appeal and that said respondents-appellants relied on the said brief. Acting on said pleas this Court resolved on December 7, 1955, to defer action on petitioner's motion and respondents' "Manifestation" until the case is considered on the merits.

At the deliberation of this case previous to the rendition of judgment, a member of this Court called our attention to the fact that the assignments of error made by Dra. Gorospe's brief refer only to the ground of her appeal (ruling No. 2); that nothing contained therein has any bearing on ruling No. 3 from which the respondent city officials have appealed; and that under section l-(/), Rule 52 of the Rules of Court, also in connection with section 1, Rule 58, an appeal may be dismissed for want of specific assignment of errors in appellant's brief. Said member, therefore, states that it is now time to act on the matter and recommends that the appeal of respondent City of Baguio officials be dismissed because the ground of petitioner's motion to that effect is, in his opinion, well taken.

Before entering into the discussion of the merits of the appeal, We have to state that there is no dispute that the appeal of respondent City of Baguio officials has been allowed and that section 5, Rule 53, also in connection with section 1, Rule 58 of the Rules of Court, prescribes:

> "Sec. 5. *Questions that may be decided*.—No error which does not affect jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in brief, *save as the court, at its option, may notice plain errors not specified, and also clerical errors*".

and as hereinafter will be shown, there is no question that the trial judge, plainly without authority or power, ordered said respondent city officials to pay petitioner, in their official capacity, the former's salary accrued during the pendency of this case, when the funds with which said payment is to be made belong to the City of Baguio and this municipal

corporation is not a party to this case. We, therefore, deny petitioner's motion to dismiss the appeal of respondent city officials.

Discussion of the controversy.—The only questions at issue requiring Our determination in this appeal, are the following: (1) whether or not respondent Josefina A. Gorospe is entitled to recover from the petitioner Andres A. Angara the sum of P5,000 with which to meet her attorney's fees and expenses of litigation; and (2) whether or not petitioner Andres A, Angara is entitled to receive the salaries of the Health Officer of the City of Baguio that had been accrued during the pendency of this case, and in the affirmative case, whether the respondent city officials can be ordered to pay the same.

Dr. Andres A. Angara commenced *Quo Warranto* proceedings in the Court of First Instance of the City of Baguio for the purpose of securing from the Court Judgment in his favor restraining Dr. Gorospe from performing the functions of said City Health Officer, a position to which petitioner had been duly appointed by the proper authorities. It happened, however, that the respondent city officials, acting by direction or in conformity with the Department of Health and the recommendation of Dr. Horace DeLien, Chief, Health and Sanitation Division, U.S.A., Operations Mission to the Philippines, ordered Dra. Josefina A. Gorospe to continue performing the duties of the position of City Health Officer of Baguio to which she had been designated in a temporary capacity, with the understanding that she was to be paid, as she was actually paid, the salary assigned in the Budget for the position in question. Dr. Angara was not suspended or removed from his position as City Health Officer of Baguio. He was simply detailed to another position, undoubtedly with no less salary than what he then had, in accordance with paragraph of the Memorandum to the Agencies of the Philippine Governmerit for the sending of Filipino technicians abroad under the ECA Technical Assistance Programme, and naturally in such situation Dra. Gorospe could not surrender, against the instructions of the Department of Health and the recommendation of Dr. Horace DeLien, the position to Dr. Angara. And as the latter made Dra. Gorospe a respondent in the *Quo Warranto* case she had necessarily to defend herself and secure the services of an attorney to protect her interests in the matter. This she did by contracting the services of Attorney Claro M. Recto to whom she allegedly bound herself to pay the sum of P5.000 apparently including other litigation expenses.

Our Civil Code reads as follows:

> "ART. 2208.—In the absence of stipulation, attorney's fees and expenses of

litigation, other than judicial costs cannot be recovered, *except*:

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;

(4) In case of a clearly 'unfounded civil action or proceeding against the plaintiff.

(11) *In any other ease where the court deems it just and equitable thai attorney's fees and expenses of litigation should he recovered.*

In all cages the attorney's fees and expenses of litigation must be reasonable."

In the case at bar respondent Gorospe was the plaintiff in the counterclaim to the petition of Dr. Angara, and although the former was not compelled to litigate with third persons but with the petitioner of the action, yet there is no question that she had to incur expenses to protect her interests.

The action which Dr. Angara instituted against the respondents had to be dismissed before the case was even heard on the merits and after the Supreme Court had rendered decision in case G. R. No. L-8408, and this could not have happened if said civil action prosecuted in the Court of First Instance of the City of Baguio had not been clearly unfounded. Anyway, paragraph (11) of the aforequoted Article 2208 of the Civil Code empowers the courts (when they deem it just and equitable), to grant to any of the parties a *reasonable* amount for attorney's fees and expenses of litigation. Now, considering the nature of case No. 465 of the Court of First Instance of Baguio and cases G. B. Nos. L-8408 and L-9230 of this Court, the standing of the attorney that appeared for Dra. Gorospe in all these cases and the actual purchasing power of the Philippine peso, it would seem that the sum of F5,000 she demands for attorney's fees and litigation expenses is more than reasonable. However, and despite these reasons, a majority of this Court maintains that Dra. Josefina A. Gorospe as an officer of the City of Baguio was entitled to the services of the City Attorney and as the record fails to show any reason why this Government lawyer could not represent and properly defend her interests, she has not proved her right to employ the services and avail herself of the talents of so high rank and expensive lawyer and then charge the latter's fees against the petitioner.

Anent the aforequoted provisions of Article 2208, No. 4, of the Civil Code, a majority of this Court further argued: (a) that inasmuch as the petitioner won in the lower Court his motion

for the issuance of a preliminary (mandatory) injunction commanding the respondent city officials of Baguio to pay his monthly salaries (during the pendency of the *Quo Warranto* case and) until further orders from the Court; and (b) that although the writ of preliminary (mandatory) injunction was annulled and voided by Us in disposing of the certiorari case filed in this Court by the respondents (G. R. No. L-8408), Mr. Justice Marceliano Montemayor vigorously voiced a dissenting opinion in favor of the petitioner, it cannot be said that the *Quo Warranto* proceedings instituted in the lower Court by the petitioner against respondents is a "case of a *clearly unfoitnded* civil a'ction or proceeding against the plaintiff" (in the counterclaim). Hence a majority of this Court voted for the affirmance of the order appealed from in so far as it dismissed the counterclaim of Dra. Josefina A. Gorospe, for attorney's fees and expenses of litigation.

II. As stated before, Dr. Angara was detailed to the Division of Tuberculosis to assist in the implementation of Act No. 1136 extending TB program to the rural areas. The petitioner do not claim that in said detail he was to be paid less than the salary he had as, City Health Officer of Baguio. Yet, contrary to his commitments with the Government he refused to render the services attached to the position to which he had been detailed. As the case of *Qua Warranto* instituted by Dr. Angara was dismissed, and after such outcome he voluntarily accepted and started to perform the duties of the position which at first he had declined. We do not see Our way clear to uphold his claim to the accrued salaries of the position of City Health Officer of Baguio which he never earned. Such being the case We have to declare that he is not entitled to such accrued salaries. But this is not all. At the beginning of this *Quo Warranto* case in the lower Court, the trial judge issued a preliminary mandatory injunction commanding the respondent officials of the City of Baguio, among other things, to pay petitioner Andres A. Angara his monthly salary as City of Baguio Health Officer pending the final disposition of the case and until further orders from the Court. This order was immediately brought up to Us by certiorari of the respondents (G. R. No. L-8408) and We promptly gave due course to the petition and issued a preliminary injunction against the respondent judge forbidding him from giving force to said order that was the subject of the recourse. After hearing We declared that Dr. Gorospe did not usurp or unlawully withhold the office of City Health Officer of Baguio, and by making permanent the preliminary injunction issued We reversed the trial Court's order commanding the payment to . Dr. Angara of his alleged monthly salaries as City of Baguio Health Officer. Consequently, by Our decision in said case G. R. No. L-8408, We made it clear that Dr. Angara was not entitled to the salaries of Baguio City Health Officer during the pendency of the case at bar in the lower Court, and it is to be remembered that the same decision moved

Dr. Angara to ask for the dismissal of said *Quo Warranto* case, though insisting on being paid the salaries of the Health Officer of the City of Baguio for the period comprised within the institution of the *Quo Warranto* and its dismissal.

But let Us assume for a moment that he had the right to collect said accrued salaries. Even so We could not order the respondent city officials of Baguio to pay them to him. The items for said salaries must have been appropriated and made ready for disbursement by the corresponding Appropriation Ordinances approved by the Council for the City of Baguio and were properly and duly paid to Dra. Gorospe, who acted as and actually performed the duties of Health Officer of said City. The salaries of this office for the period in question have already been spent, and before any payment to Dr. Angara of the accrued salaries he is now demanding could be made anew, it would be necessary that a new appropriation for the amount involved be duly approved by the Municipal Council of Baguio. The respondent city officials have been sued in their official capacity and nothing of record shows that they should pay said accrued salaries out of their personal funds and much less when they won the case. As the City of Baguio is not a party to these proceedings, it cannot be compelled without hearing and without due process of law, to pass an ordinance appropriating and authorizing the disbursement and payment to Dr. Angara of the alleged accrued salaries he claims for a period during which he did not render any services to the city of Baguio.

Wherefore and on the; strenght of the foregoing considerations, We affirm ruling No. 2 and reverse ruling No. 3 of the order of the lower Court of May IS, 1955, appealed from, and, consequently, We hereby deny the claim of respondent Dra. Josefina A, Gorospe in the sum of five thousand pesos (P5,000) for attorney’s fees and litigation expenses, as well as the claim of petitioner Dr. Andres A. Angara to his alleged accrued salaries as Health Officer of Baguio during the time he was in effect enjoined from performing his duties as such. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bautista Angela, Labrador, Conception, Reyes, J. B. L., JJ., concur.

Bengzon, J., concurs in the result.

DISSENTING OPINION

Montemayor, J.,

In so far as the majority opinion reverses Ruling No. 3 of the lower court, ordering respondents city officials to pay petitioner his salary which accrued during the pendency of the case, I dissent.

The amount of the salary involved is relatively small, even insignificant. It covers the period only from November 1, 1954 to February 19, 1955, roughly, about three months and a half. Because of its relative insignificance, petitioner Angara could well afford to lose it, even waive it, and the City of Baguio, represented by respondents city official, on the other hand, could well afford to pay it, or if it did not pay, would gain and profit very little by its non-payment. But to me, the principle involved is important, hence this dissent.

That misunderstanding and confusion, even a series of errors, committed perhaps in good faith, unfortunately have preceded and precipitated the commencement of these *quo warranto* proceedings in the trial court, is evident. To clear up the misunderstanding, and confusion, correct said errors, and to vindicate and protect his right to the post of City Health Officer which he was led to believe had been threatened and placed in jeopardy, were the main reasons that compelled petitioner Angara to come to court and initiate these quo warranto proceedings. If after a consideration of the whole case and the circumstances surrounding the same, we believe that the filing by petitioner of these proceedings was *clearly unfounded* and frivolous, then he has no right to the salary for three months and a half, which he failed to obtain and which the respondents city officials refused to pay. But if, on the other hand, there .is reason for the belief that in so filing these proceedings, petitioner acted, not only in good faith, but properly to protect his right which was being impaired and imperilled by the attitude and action taken by the Department of Health and the Baguio City officials, then said salary should be paid, because we should not penalize, not even discourage a citizen to litigate in court, not only to protect his rights, but also to strengthen and vindicate the tenure of office of civil service employees and their security from removal without cause, guaranteed by law and the Constitution.

For a better understanding of the issue involved, as well as the status and conditions obtaining before the commencement of the quo warranto proceedings, it is well to bear in mind the following facts. In 1953, petitioner Angara was the City Health Officer of Baguio, and legally, for that matter, since then and up to the present time, has always been said City Health Officer without interruption. Respondent Gorospe was only a city medical officer, his assistant and subordinate. In August, 1953, according to the majority opinion, "with the approval of the Cabinet and with the *consent of the Baguio City Council*, Angara was sent to the United States to *undertake further studies in public health administration in connection*

with his said position." Inasmuch as he continued holding said post of City Health Officer, the City of Baguio continued paying hia salary as such City Health Officer during his stay in America, and after his return to the Philippines, continuously and without interruption, except during the period from November 1, 1954 to February 19, 1955. In other words, his salary item had not and could not be touched and appropriated for any other purpose, as long as he remained said City Health Officer. Although he left for the United States in August, 1953, apparently nobody acted in his place, at least not legally, because it was only in. January, 1954, that respondent Gorospe was designated ¦by thePresident as *Acting* City Health Officer of Baguio, "said designation, to continue only during the absence abroad of the regular incumbent of the position" (Annex D). In connection with said designation, the Office of the President also stated and made clear that the designee (Gorospe) was to continue receiving her salary as medical officer, plus the difference between said salary and that of the post of City Health Officer. (Annex D).

Petitioner Angara returned to the Philippines in August, 1954. On his reporting to the Office of the Secretary of Health, it would appear that the plans of said Secretary as to Ms future work and duties were not discussed. At least the record says nothing on this point. Petitioner was merely asked to take a vacation of one week. On September 7,1954, after the expiration of his said vacation, petitioner wrote to the Secretary of Health, informing him of his anxiety and decision to report for duty immediately as City Health Officer, and on September 10, 1954, he reassumed his old position as City Health Officer of Baguio.

Following the terms of the designation of respondent Gorospe as Acting City Health Officer "to continue only during the absence abroad of the regular incumbent," when Angara returned to Baguio, specially when he re-assumed his position as City Health Officer, then the designation of Gorospe as Acting City Health Officer automatically ceased. In fact, respondent Gorospe must have so understood it and she delivered the office which she had been occupying in an acting capacity. This is confirmed by the fact that when on September 14, 1954, petitioner Angara by means of a telegram was called to Manila by Dr. Nolasco, Executive Officer of the Bureau of Health, for a conference, according to the record and according to the majority decision, before leaving Baguio, Angara left written instructions to respondent Gorospe (Annex F) to take up routine matters and sign routine papers "for and in the. absence of" the City Health Officer. It could not have been to act as City Health Officer because, as already stated, she had already and automatically ceased as Acting City Health Officer "when Angara reassumed his office on September 10, 1954.

But imagine petitioner's surprise, when he returned to Baguio on September 18, 1954 to

continue discharging the functions of his office as City Health Officer, The situation had radically and completely changed. Respondent Gorospe it seems, refused to give up the office which she was merely asked by her superior officer to take charge of for a few days. She then apparently claimed to be the City Health Officer of Baguio; and the City Mayor wrote the letter (Appendix A) to Angara informing him that the Secretary of Health in a long distance telephone conversation had told him "that as far as the Department of Health is concerned, Dra. Josefina A. Gorospe is the City Health Officer of Baguio," and that he (the Mayor) was also "requested to take measures and to inform the City Treasurer that your (Angara's) salary should not be paid by the City of Baguio; on the other hand, the salary of the City Health Officer will be paid to Dra, Gorospe as *City Health Officer*." The City Mayor concluded the letter by stating that "in view of these circumstances, I am constrained to recognize as City Health Officer Dra. Gorospe, in line with the instructions of Secretary Garcia of the Department of Health."

In another letter (Appendix B), the City Mayor wrote to Malacaiiang through Assistant Executive Secretary Enrique C. Quema, informing that inasmuch as the Secretary of Health had recognized respondent Gorospe as the City Health Officer of Baguio, he, the City Mayor, had instructed the City Treasurer and City Auditor that as far as the City of Baguio was/concerned, Dra. Gorospe was the City Health Officer. (Apparently, this was for purposes of payment of salary). That was then the situation. During Angara's four day absence from Baguio, from September 14 to September 18, 1954, and while he was in ¦Manila where he had been called for a conference with the Secretary of Health, apparently because Angara had his doubts about the legality and propriety of his temporary detail to Manila in the Division of Tuberculosis to assist in the implementation of Act No. 1136, extending T-B progress in the rural areas, respondent Gorospe, who as already stated, had already ceased to be Acting City Health Officer of Baguio since September 10, 1954, without any new designation or new appointment, had overnight, as it were, become the full-fledged City Health Officer of Eaguio, and what is more, she was recognized as such not only by the Secretary of Health, but by the top Baguio city officials. To petitioner Angara, it meant the loss of his position as City Health Officer. Without much ado and without due process, he was being removed from office without cause and without any investigation. He could not well insist in entering his old office of City Health Officer because respondent Gorospe, claiming to be its regular incumbent, was there to prevent him from doing so; and behind her were the top city officials who recognized her as City Health Officer. Furthermore, even if he succeeded in entering his office and discharging the duties thereof, he could receive no pay because the Mayor, City Treasurer and the City Auditor who had

charge of paying said salary were supposed to pay it to none other than respondent Gorospe. Neither could he go to Manila and remonstrate with the Secretary of Health, since the latter official, apparently displeased with petitioner's declining the detail, had already informed the City Mayor of Baguio, by long distance telephone, that he had recognized respondent Gorospe as the City Health Officer of Baguio. As already stated, petitioner Angara had to take the only course available, namely, to go to court, claim his right to the offiee of City Health Officer of Baguio, and through *quo warranto* proceedings test the right of respondent Gorospe to hold said office, and the right of the city officials to withhold his salary as City Health Officer, which all along he had been receiving legally and without interruption. Can we, in conscience and in view of these circumstances, now hold this court action of Angara to vindicate his right to his office, as clearly unfounded and frivolous so as to deprive him of his salary, while he was fighting for said vindication? The answer in my opinion must be in the negative. One of the main reasons why we denied the claim of respondent Gorospe for attorney's fees was that we could not well regard these *quo warranto* proceedings as clearly unfounded, for the reason that petitioner won his case in the lower court, not only in the issuance of the writ of injunction, but also in the main case, and also because even in the certiorari case filed with us, in connection with the injunction issued by the lower court, this Court was divided, there being a dissenting opinion.

But one might say that pending the *quo warranto* proceedings, in order not to interrupt the payment of his salary, petitioner Angara should have accepted the detail in Manila. But then, there might have arisen a legal question, at least to his legally untutored mind. If lie accepted the office in the Division of Tuberculosis to assist in the implementation of Act No. 1136, extending T-B progress to the rural areas, for the reason that the appointment or detail thereto stated no term, period, or condition, said acceptance might be construed as an abandonment of his office as City Health Officer of Baguio, which abandonment would be fatal in his *quo warranto action*. Apparently, to play safe, he declined to accept the new office' or detail offered to him. For this, in my opinion and from a legal standpoint, he cannot be blamed. But it will be noted that as soon as the decision of this Court in the certiorari case (G. R. No. L-8408) was promulgated on February 17, 1955, informing him that contrary to what he was led to believe by the Secretary of Health and the City Mayor, he still wagi, the City Health Officer, that he had not lost it, and that he would be returning to said post, as in fact he did, after his detail, he, Angara, did not wait for that decision of ours to become final, but as soon as he was informed of it, he accepted the detail and began discharging the functions connected therewith on February 20, 1955. All this to my mind leads to only oneconclusion, namely, that to petitioner Angara, his detail to Manila was only

a minor question; to him the major problem was the threatened loss of his office of City Health Officer of Baguio, which he had. held for so many years, and which he tried to protect and to vindicate by these *quo warranto* proceedings. I do not believe that his court action in trying to protect that right which he in good faith believed to be in jeopardy, can be regarded as clearly unfounded court action, sufficient to penalize him with the loss of his salary for a period of three months and a half. In fact, it may be said that he won his case in thi& Court because we clearly assured him that he was and still is the City Health Officer of Baguio, and was not and could not be removed therefrom. To obtain and-secure that judicial assurance, his court action was justified.

The majority opinion states that the City of Baguio should have been made a party in this case for otherwisej the city officials, respondents herein, would not be legally authorized to pay petitioner's salary. This, I believe is based on a misunderstanding. The payment of salary ordered by the trial court does not and should not involve any new appropriation of city funds. As already stated, petitioner all along continued to be the City Health Officer of Baguio and all along: his item remained intact. He continued receiving the salary for his office item during his absence while in the United States, after his return, and, except for the period from November 1, 1954 to February 19, 1955, up to the present time. Respondent Gorospe was, all the time, receiving her salary from the item of medical officer, the office she permanently held. So, inasmuch as the salary item of Angara, as City Health Officer, is there and has always been there, and the only reason why petitioner failed to receive his salary as City Health Officer for three months and a half was because the city officials declined to pay the same, that was the reason why only they and not the City of Baguio were made respondents herein, to compel them to make such payment. Moreover, in refusing to pay petitioner's salary, the city officials never claimed or gave as a reason for said refusal, the lack of funds or appropriation for said salary. The only reason given by them was that petitioner rendered no service during that period of three and a half months. (See their Opposition to Motion, dated April 12, 1955, p. 200 of the Record.)

Furthermore, we have in numerous cases already decided that city officials may be ordered by the courts to pay the salaries of its employees, even when the city itself was not made a party to the suit.

In the case of Antonio Uy vs. Jose Rodriguez as Mayor of the City of Cebu 95 Phil., 493, 50 Off. Gaz., [8] 3574 through Mr. Justice Labrador we ordered said city mayor to reinstate petitioner to his former position of Senior Detective Inspector with right to arrears in salary from the time of his separation to the date of his reinstatement. The City of Cebu was not

made a party to that action.

In the case of Ahmed Alcamel Abella vs. Honorable Jose V. Rodriguez as City Mayor of Cebu (95 Phil., 289, 50 Off. Gaz., [7] 3039), through Mr. Justice Labrador, we ordered Mayor Rodriguez to reinstate petitioner to his position as Detective in the Secret Service of the Police Department of the City of Cebu, with salary during the period of his separation. The City of Cebu was not made a party defendant.

In the case of Mamerto Mission, et al. vs. Vicente del Rosario as Acting Mayor of Cebu City, Felipe B. Pareja as City Treasurer, and Martin Kintanar as City Auditor (94 Phil., 483, 50 Off. Gaz., [4] 1571), through Mr. Justice Bautista Aligelo, we granted the petition for mandamus and petitioners' prayer for reinstatement as Detectives, in the Police Department of Cebu City, with payment of their salaries from the date of their removal up to the time of their reinstatement. Again, the City of Cebu was not made party defendant.

Then we have the recent case of Manuel P. Covacha, petitioner, vs. Felix P. Amante, in his capacity as Mayor of the City of Bacolod, respondent, (G. R. No. L-8358,, May 25, 1956), involving an appeal by petitioner from the decision of the Court of First Instance of Negros Occidental, denying his petition for a writ of mandamus to compel respondent Amante to reinstate him as sergeant of the Police Force of Bacolod. Reversing the appealed decision, we directed the defendant Mayor or his successor in office not only to reinstate petitioner in his former position as Sergeant in the Police Force, but also to pay his back salary from September 1, 1951. The City of Baeolod was not made a party respondent in the action. In all the aforecited cases, even though the cities involved were not made parties, nevertheless, we ordered the officials thereof, such as the Mayor, City Treasurer, and City Auditor, to pay the unpaid salaries of the petitioners.

Now going to the appeal of the Baguio City officials from the decision of the trial court, ordering them to pay petitioner's salary, true, said officials perfected their appeal ; but according to the record, they would appear to. have failed to prosecute the same. They filed no brief in support of said appeal. By resolution of this Court of August 11, 1955, said officials, represented by the City Attorney, were ordered to file their brief within 20 days from notice, and according to the record, copy of the resolution was received by said City Attorney on August 24, 1955. When the period for filing their brief had long expired by several months, counsel for appellee Angara, by motion of November 12, 1955, asked this, Tribunal to dismiss the appeal of said city officials. Required to answer said motion, through the City Attorney, by a "Manifestation" dated December 1, 1955,

they informed this Court that they were "no longer filing a brief separate from that filed by respondent Josefina A. Gorospe for the reason that all the respondents-appellants in this case have been represented in the lower court *by the same counsel who has already filed a brief in connection with their appeal*, and that said respondents-appellants now rely on the said brief".

The reason given in the manifestation of the City officials to the effect that they were relying on the brief for respondent Gorospe, inasmuch as the attorney who filed said brief was the same counsel who represented all the respondents-appellants in the trial court, seems to be incorrect and is not supported by the record of the trial court. We find from the said record that counsel for Gorospe in the trial court did not perfect the appeal for the city officials, but it was the City Attorney who perfected said appeal. Again, counsel for respondent Gorospe, who sometimes also represented the city officials, in the trial court are different from Gorospe's counsel in the appeal. In the trial court, they were represented by Attorneys Canlas, Vitug and Aquino, while her brief before us was prepared and signed by Atty. Glaro M. Recto, who never appeared for Gorospe or the city officials in the trial court.

Moreover, if it had been the intention of respondents city officials from the beginning, to rely on the brief filed by Gorospe, they should have so informed this Court within the period for filing their brief. They should not have waited until said period had expired by several months, and until counsel for Angara, had moved for the dismissal of their appeal. Furthermore, and this is important, even assuming that this manifestation that they were relying on the brief of respondent-appellant Gorospe, were not belated, still there is nothing in. said brief that makes any mention, much less discussion, even remotely, of the merits of the appeal of the city'officials. Said brief of respondent Gorospe was filed exclusively for respondent Gorospe, not for anyone else, even by reference. The errors assigned therein were exclusively devoted to the merits of the claim of respondent Gorospe for attorney's fees. Nothing, absolutely nothing was said about the propriety or impropriety, legality or illegality of the award by the trial court to petitioner of his salary, and the obligation of the officials to pay the same.

There are numerous authorities to the effect that when an appellant fails to make an assignment of errors, the appeal should be dismissed. Under section 5, Rule 53 of the Rules of Court, which provides that no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief. Moran's Comments on the Rules of Court, Vol. I, pp. 995-996 (1952 ed.), has this to say:

> "Under this section, the general rule is that only questions stated in the assignment of errors and properly argued in the appellant's brief, may be considered by the court. There must, therefore, be assignment of errors in order that the appellate court may have questions to consider. Where no such assignment of errors is made, no questions may be considered by the appellate court and, therefore, the appeal should be dismissed. In one case, the Supreme Conrt refused to pass upon a question not raised in the assignments of error in the Court of Appeals." * * *.
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> "The assignment of errors, to be valid, must point out and specify separately, distinctly and concisely, without repetition, the errors intended to be urged, which shall be numbered consecutively. In one case, appellant, in his printed brief, made no specific assignment of errors, but argued two questions in a general way. The appeal was dismissed on the ground that there was no question which the appellate court could consider.
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> "In another case, appellant's printed brief made only one assignment of error, which is as follows: 'The Court of First Instance of tliis city incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence." It was held tliat this is not a sufficient compliance with the rules of court which require that the errors intended to be urged must be pointed out and specified separately, distinctly and concisely. As there are many ways in which a judgment may be contrary to law and the weight of the evidence, such a general statement leaves the court absolutely in the dark as to what to look for, and forces the court to struggle through the brief and records in an effort to pick out what is intended to be lirged."

In the present case, the city officials not only failed to make any assignment of errors, much less discuss the same, but they even failed to file their brief on time, except that they made a belated manifestation of seeking the benefit and taking comfort in the brief filed for respondent-appellant Gorospe, which unfortunately, either intentionally or otherwise fails to make any assignment of error on their behalf, much less discuss the merits of their appeal. The net result and naked effect is that respondents city officials having failed to file their appeal brief on time, and when faced with the dismissal of their appeal due to said failure, they, to preserve said appeal, made a belated manifestation, months afterwards, to the effect that they relied on the brief of Dra. Gorospe Which brief was neither meant

nor intended for them did not discuss, not even mention the merits of their appeal, and which brief was prepared and filed by an attorney who never appeared for them nor pleaded their cause, either in the trial court or in this Tribunal. Consequently, it can hardly be said that a brief has been filed by or for them in order to preserve their appeal and authorize and require us to pass upon the merits of said appeal. For these reasons, I believe that the appeal of the city officials should be dismissed.

I deem it unnecessary to discuss the merits of the claim I of respondent Gorospe for attorney's fees, in support of which claim the writer of the majority opinion devotes about three pages (Pages 9-12 of said majority opinion) for the reason that said view does not represent the opinion I of the majority, which ruled to deny said claim for attorney's fees, and from which ruling I do not dissent.

The majority opinion, on Page 13 thereof, says that petitioner Angara moved for the dismissal of the *quo warranto* proceedings. ^ I am afraid said assertion is not exactly correct. It finds no support in the record. The record shows that it was respondent Gorospe, not Angara, who moved for the dismissal of said *quo warranto* proceedings (p. 175, Record from Trial court), and that although petitioner Angara did not oppose said motion for dismissal, nevertheless, he insisted in the payment of his salary, which the city officials refused to pay him for a period of three months and a half, and he asked that the lower court rule upon said claim, which said court decided in his favor.

Again, the majority opinion, on the same Page 13 thereof, says that the majority decision in the certiorari case, G. R. No. L-8408, wherein the writ of preliminary injunction issued by the trial court was annulled and set aside, decided and made clear that Angara "was not entitled to his salaries of Baguio City Health Oificer during the pendency of the case at bar in the lower Courti" I disagree. Said majority decision did not discuss, even mention the salary corresponding to the position of City Health Officer during the pendency of the case in court, much less decide, as claimed in the majority opinion, that Angara was not entitled to said salary or salaries. That .point was left untouched in said decision. Not one word 'as said about it. What was decided and said there Iwas that the detail of Dr. Angara made by Health De-Ipartment Order No. 167, series 1954, was valid; that the temporary occupancy of the position of City Health Officer by Dra. Gorospe, in an acting capacity, did not constitute usurpation of said office; and since the case involved the validity of Department Order No. 167, and the issuance of a writ of preliminary injunction by the trial court practically nullified said Order without the Department Secretary being made a party, and being given a chance to be heard, therefore, the issuance

of said writ was done in grave abuse of disci'etion. On the other hand, as repeatedly stated, said decision made clear that Dr. Angara did not and never lost his position of City Health Officer.

In conclusion, I believe and hold that the *quo warranto* action filed by Dr. Angara not only was not *clearly unfounded*, as correctly ruled by the majority itself, but that it was justified in order to protect and vindicate his. right to the office of Baguio City Health Officer, and in this respect he was upheld by this Tribunal; that for a period of three and a half months, during the pendency of the case, Dr. Angara did not and could not very well accept the office and detail in Manila offered him by the Department of Health, for said acceptance to his mind might be construed as an abandonment of his office of City Health Officer, which abandonment would jeopardize his position in his court action, but that as soon as he learned of the decision of this Court assuring him that he was still said City Health Officer, he immediately accepted the detail; that in my opinion, he is fully entitled to the salary for said period; that the city officials who refused to pay the same were ordered by the trial court to make the payment; and that although said city officials appealed said order, they failed to file an appeal brief, and the brief filed for Dra. Gorospe may not be regarded as a brief of or for them for it was never so intended, consequently, their appeal should be dismissed. In view of the foregoing, I dissent.

Padilla, J., concurs.

Date created: October 13, 2014