

APARECIO ALBUERA, ETC., ET AL. PETITIONER AND APPELLEES, VS. BERNARDO TORRES, AS PROVINCIAL GOVERNOR OF LEYTE, AND FRANCISCO ASTILLA, AND MANUEL NIERRAS AS MEMBERS OF THE PROVIN...

G.R. No. L-9634. October 30, 1957

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Plaintiffs herein are foremen, carpenters, "camineros" truck drivers and a watchman employed in the maintenance of the provincial roads and bridges of Leyte. This action was instituted against Bernardo Torres, as Provincial Governor of Leyte, and Francisco Astilla and Manuel Nierras, as Members of the Provincial Board of Leyte, for the purpose of restraining them from dispensing with the services of the plaintiffs and of securing indemnity for moral damages. Upon the filing of the complaint, the Court of First Instance of Leyte, issued an order directing the defendants "to desist and refrain from removing plaintiffs from their present positions, pending the termination hereof, and/or unless a contrary order is issued by this Court, upon filing of a bond of One Thousand Pesos (P1,000) to answer for any damages which the defendants may thereby suffer." Thereafter, said court rendered a decision the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court adjudges this case by granting the petition of the plaintiffs, making the preliminary injunction issued by this Court on February 6, 1954, permanent and ordering the defendants and/or their representatives to refrain from removing the plaintiffs from their present position. Without pronouncement as to damages hut with cost against the defendants."

A reconsideration of this decision having been denied, the case is now before Us on appeal taken by the defendants. They maintain that:

"1. The court below erred in admitting' the amended answer of Fiscal Alberto Jimenez when there "was no motion asking leave for its admission (Rec. on Ap., p. 40).

"2. The trial court erred in refusing respondents to withdraw the amended answer filed by Fiscal Jimenez.

"3. The trial court erred in granting the motion for judgment on the pleadings and in promulgating said judgment.

"4. The trial court erred in stating, as basis for denying the motion for reconsideration, that the original answer and the so-called amended answer, do not constitute valid defenses.

"5. The court below erred in refusing the admission of respondents' supplemental answer setting tip new matter as defenses.

"6. The court a quo erred in confusing the term 'temporary employees' with that of 'temporary appointees' to which latter category petitioners belong and are therefore not protected under Civil Service Law and the Constitution.

"7. The court a quo erred in not applying the provisions of He-public Act No. 528 amending Section 2081 of the Revised Administrative Code.

"8. The trial court erred in not holding trial on the merits of the case."

It appears that upon service of summons, J. Quintillan, the Provincial Fiscal of Leyte, and Mateo Canonoy, a private practitioner, filed an urgent motion to dismiss. Although its opening sentence stated that the motion had been filed by defendant Bernardo Torres, the prayer was, among other things, "that the respondents be granted all other reliefs which are in consonance to law, equity and justice." Indeed, in their answer to said motion, plaintiffs prayed the court "to deny the petition of the defendants". What is more, at the hearing of said motion to dismiss, held on February 27, 1954, Fiscal Quintillan made—according to the transcript of the stenographic notes therein taken—the following statement:

"We have made our appearance for Atty. Nierras. We are not appearing for Atty. Astilla because he has indicated to me his stand on this question and I think he has his sympathy for the petitioners in this case."
(Italics ours.)

However, the Judge presiding the court was under the impression that Fiscal Quintillan had appeared exclusively for the Provincial Governor. Hence, on February 27, 1954, an order was issued¹ declaring defendants Francisco Astilla and Manuel Nierras in default. Thereafter, or on March 2, 1954, said motion to dismiss was denied. On March 9, 1954, the following were filed, namely: (1) an urgent motion—signed by Braulio G. Alfaro as "Attorney for Defendants Bernardo Torres and Manuel Nierras"—for the lifting of the order of default, insofar as defendant Nierras was concerned, upon the ground that the provincial fiscal had appeared on his behalf at the hearing of the motion to dismiss; and (2) an answer, filed by Castrense C. Veloso, First Assistant Provincial Fiscal of Leyte, as counsel for defendants Bernardo Torres and Manuel Nierras.

Acting thereon, the court issued, on March 10, 1954, an order denying said motion and stating that Atty. Alfaro is "not clothed by law" with authority to appear as one of the attorneys for the Provincial Governor, and advising Alfaro that the answer filed on behalf of said defendant be "amended by the Provincial Fiscal or by whoever acts" in his place. On plaintiffs' motion, filed on the same date, the lower court reiterated its declaration of default of the defendants Nierras and Astilla and ordered "all allegations in the answer," relative to Nierras, discarded. Soon thereafter, or on March 25, 1954, the new Provincial Fiscal of Leyte, Alberto Jimenez, filed, on behalf of the Provincial Governor, an amended answer—which was admitted by the court on May 25, 1954—reading:

"Comes now the defendant, Bernardo Torres, and, through his counsel the undersigned Provincial Fiscal hereby amends paragraphs 1 to 12 of his answer filed with this Honorable Court on March 9, 1954, by denying generally and specifically each and every allegation in the complaint, except the allegation that the defendant Bernardo Torres, as Provincial Governor, is the chief executive of the province of Leyte and member of the Provincial Board ex-officio, and that defendants Francisco Astilla and Manuel Nierras are likewise members of the Provincial Board of Leyte, and all are residents of Tacloban City."

Thereupon, plaintiffs moved for a judgment on the pleadings, upon the ground that the general and specific denial contained in this amended answer amounts to an admission of the allegations of the complaint. On June 8, 1954, the lower court rendered a decision sustaining this pretense of the plaintiffs, and, premised upon the allegation of the complaint, held that petitioners were entitled to the relief therein prayed for, inasmuch as, pursuant to the Constitution, "no officer or employee in the Civil Service shall be removed or except for cause as provided by law."

At the outset, the issue before us is mainly due to the amended answer filed by the Provincial Fiscal on March 25, 1954 in obedience to the order of the lower court dated March 10, 1954, holding that a private practitioner has no authority to appear for the provincial governor. Without passing upon the accuracy of this pronouncement, insofar as a provincial governor sued in his official capacity may be concerned, it is clear to our mind that, a public officer, when sued in his private capacity, may engage the services of a private counsel. Although in the case at bar, the title of the complaint and some allegations thereof indicate that defendant Bernardo Torres is sued as Provincial Governor of Leyte, the complaint contains other allegations and a prayer for moral damages, which, if due from the defendants must be satisfied by them in their private capacity. Insofar as this phase of plaintiff's cause of action is concerned, it cannot be disputed, therefore, that the Provincial Governor of Leyte could properly avail himself of the services of a private practitioner.

With reference to the effect to the amended answer dated March 25, 1954, the lower court held that the general and specific denial therein made failed to contest the allegations of the complaint and, hence, justified the rendition of judgment for the plaintiffs. However, the cases of *Hogar Filipino vs. Santos Investment, Inc.*, (52 Off. Gaz. No. 5, p. 493, May 1953), *Spencer vs. Cruz* (46 Off. Gaz. 3801), *Dacanay vs. Lucero* [*] (42 Off. Gaz., 2119), and *Bastaño vs. Amador*, G. R. No. 49255 (September 18, 1944), cited in the decision appealed from, are not in point. The defendants therein filed only one answer, which contained nothing but a general and specific denial of the allegations in the complaint. Plaintiffs herein and the lower court were seemingly under the belief that such is the situation confronting us. It will be noted, however, that the amended answer in question was filed not in lieu, or in substitution, of the original answer. It merely amended "paragraphs 1 to 12" of the answer of March 9, 1954, "by denying generally and specifically each and every allegations in the complaint." Although this expression is not as plain and explicit as it should be, and may be susceptible of several interpretations, we believe—in line with the principle that rules on pleadings and practice should be liberally construed, with a view to promoting the disposition of litigations in such a way as to do substantial justice to the parties concerned—that said allegation in the amended answer of March 25, 1954, may be construed as adding to paragraphs 1 to 12 of the answer dated March 9, 1954, a general and specific denial of each and every allegation of the complaint. Inasmuch as the allegations of the complaint are thus traversed by defendant Bernardo Torres, a judgment on the pleadings, as regards this defendant, was not in order, and a hearing on the issues thereby raised, particularly the issues of fact, should be held.

The need of taking evidence thereon, specially with respect to the precise status of herein petitioners, under the Civil Service Law, becomes more apparent when we bear in mind that, in two recent decisions (*Villanueva vs. Alera*, L-10586 [May 29, 1957] and *Elegida vs. Gatucara*, L-10588 [August 29, 1957]) we held, pursuant to Republic Act No. 528, that "appointments to all positions in the provincial service which * * * are in the

unclassified civil service and of temporary employees in classified civil service positions made in the absence of eligibles, shall be submitted to the Provincial Board for approval," and may, therefore, be disapproved by said board.

Wherefore, the decision appealed from is hereby set aside, and let the records of this case be remanded to the lower court for further proceedings, with costs against the petitioners. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

Judgment set aside with instructions.

[*] 76 Phil. 139.

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