

ABELARDO SUBIDO, AS COM-MISSIONER OF CIVIL SERVICE, AND ALIPIO BUENAVENTURA, AS EXECUTIVE DIRECTOR, CIVIL SER-VICE COMMISSION, PETITIONERS, VS. HON. SIMEON GOPENGCO, JUDGE, CFI ...

G.R. No. L-25618. March 28, 1969

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

Fausto Varela was the Deputy Commissioner of Civil Ser-vice on February 21, 1962 when he was suspended from office by the President of the Philippines on charges of grave misconduct in office, insubordination, discourtesy, and violation of adminis-trative order 46, series of 1937 (regarding undue publicity), filed against him by the then Commissioner of Civil Service Amado del Rosario.

On November 11, 1965 Varela filed a petition for certiorari and mandamus with the Court of First Instance of Manila against Salvador Mariño (then Executive Secretary), Civil Service Com-missioner Abelardo Subido and Acting Deputy Commissioner of Ci-vil Service Alipio Buenaventura, seeking the nullification of the administrative proceedings against him and his reinstatement to his position as Deputy Commissioner. In his petition, docketed as civil case 63245, Varela alleged that he was suspended on the ba-sis of an unverified complaint; that his suspension was lifted only after 85 days had elapsed; that thereafter he was detailed successively to different positions in the Government, everyone of which was of a much lower rank than that of Deputy Civil Service Com-missioner; and that such reassignments "operated to impose upon [him] the administrative penalty of demotion and removal from his office for a cause not provided by law and without due process, in flagrant violation of Section 1 of Art. III, Section 4 of Art. XII of the Constitution and of Section 32 of Republic Act No. 2260 (Ci-vil Service Act of 1959)," and were made "in excess of jurisdic-tion and with grave abuse of discretion." He, therefore, prayed that he be reinstated as Deputy Commissioner of Civil Service.

Upon his motion, the court issued its injunctive order of November 16, 1965, and, two days later, on November 18, issued a writ of preliminary mandatory injunction directing Secretary Marino and the herein petitioners Subido and Buenaventura to re-instate him to his former position.

The petitioners herein protested the issuance of the man-datory injunction and asked the court to reconsider its order, but because the matter might take some time to resolve, they agreed to abide by the order and allow Varela's reinstatement in the mean-time.

Varela subsequently filed an opposition, and the petitioners in turn filed their reply.

Meanwhile, Secretary Marino and the petitioners filed a motion to dismiss Varela's suit, contending that the petition sta-ted no cause of action; that the cause of action, if any, was bar-red by prescription; and that Varela had waived his claim to re-instatement. Varela filed an opposition.

On December 11, 1965 the motion for reconsideration and the motion to dismiss were submitted for resolution.

On December 21, 1965, the President found Varela guilty of misconduct in office, insubordination and "presumptuous conduct," and accordingly considered him resigned from the service "without prejudice to recovering retirement and leave benefits ... and without prejudice to his appointment to another position equivalent in rank to his present post." The President's decision was contained in Administrative Order 171, dated December 21, 1965. Following the issuance of the President's order, the petitioners asked the court to dissolve the writ of preliminary mandatory injunction on the ground that the case had become moot.

Varela countered by filing a motion for a restraining order against the enforcement of the President's order. He averred that the administrative proceedings against him were void because he was suspended without being afforded an opportunity to explain; that he was suspended even before the investigation could be started; that his suspension was effected not by the President but only by the Executive Secretary acting "by authority of the President;" that at any rate the power to suspend had been transferred to the Civil Service Commissioner; that administrative order 171 was not based on the evidence presented at the investigation but on a mere affidavit; and that contrary to executive order 370, series of 1941, the case against him was not terminated within 15 days. Varela re-produced these allegations in a supplementary petition he filed on January 31, 1966.

On January 4, 1966 the court granted Varela's motion and enjoined the petitioners from enforcing the President's administrative order and from otherwise disturbing Varela in the discharge of his duties and functions as Deputy Commissioner of Civil Service.

The petitioners moved for reconsideration on the ground that the case had become moot and that enforcement of the President's order could no longer be enjoined as it was earlier executed when a copy thereof was served on Varela on December 27, 1965 and when, on the following day, December 28, the petitioner Buenaventura was sworn in office as Deputy Civil Service Commissioner in place of Varela. Actually, Buenaventura's appointment was made on December 22, but because the office was not yet vacant as Varela had not by then been informed of his relief, Buenaventura did not take his oath until the day, after Varela was served a copy of the President's order.

On January 25, 1966, the court, in two separate orders, denied the petitioners' motion for reconsideration, their earlier motion to dissolve the writ of preliminary mandatory injunction of November 18, 1965 (by virtue of which Varela was reinstated to his position), and their motion to dismiss Varela's suit in the lower court.

Hence, the present petition for certiorari and prohibition to set aside the trial court's injunctive order of November 16, 1965, the mandatory injunction of November 18, 1965 directing the petitioners to reinstate Varela to the office of Deputy Civil Service Commissioner, and the order of January 4, 1966 enjoining the petitioners from enforcing administrative order 171 and disturbing Varela in the discharge of his office. The petitioners, in consequence, likewise seek the nullification of the proceedings in civil case 63245.

We gave due course to the petition and required the respondents to answer. In the meantime, on February 18, 1966, we issued a writ of preliminary injunction enjoining the enforcement of the disputed order of November 16, 1965 and the writ of preliminary mandatory injunction of November 18, 1965.

1. In assaying the legality of the November 16, 1965 injunctive order and the writ of preliminary mandatory injunction of November 18, 1965, we take for our text a rule long settled in this jurisdiction:

"[S]ince an injunction mandatory in its nature usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing; ... on the other hand, in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily

interrupted by the de-fendant, than to establish a new relation, ... the jurisdiction to grant such injunction undoubtedly exists; and while caution must be exercised in its issuance, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute." [1]

As the issuance of a mandatory injunction is the exception rather than the rule, the party applying for it must show a clear legal right the violation of which is so recent as to make its vindication an urgent one.

Did the respondent Varela demonstrate such a clear legal right to be returned to his former post? Was there an urgent need to grant him relief? In his petition Varela alleged that his suspension was not lifted until after the lapse of more than sixty days and that instead of reinstating him to his position as Deputy Civil Service Commissioner he was detailed to several offices, one after the other, of a much lower rank, contrary to the following provisions of the Civil Service Act of 1959:

"SEC. 32. Disciplinary Action. - No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process: Provided, That a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service: ..."

"SEC. 35. Lifting of Preventive Suspension Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

But as the Solicitor General correctly argues, the detail of Varela to the different offices of the Government was merely temporary, and was done in order to clear the atmosphere in the Civil Service Commission of the animosity between Varela and Commissioner Del Rosario and other employees. [2] After all Varela Continued to receive his salary as Deputy Commissioner of Civil Service. What is more, section 35 above-quoted clearly states that in the event an administrative case is not decided within sixty days, a suspended employee must "be reinstated in the service," and only if he is finally exonerated must he be "restored to his position with full pay for the period of suspension."

Nor did the respondent's case come to court with such urgency as to call for a mandatory injunction to restore relations so recently ruptured. Varela was suspended from office on February 21, 1962, and reinstated in the service on September 28 of the, same year, but it was not until November 11, 1965 that he went to court. Consequently, restoration of the respondent to his former position, assuming arguendo that this is required by law, had ceased to be an urgent need, especially considering that the court should have foreseen that by then the administrative case would most probably not take much longer to decide, as in fact it was decided a month after the issuance of the mandatory injunction in this case.

Absent a showing of a clear, urgent legal duty to restore the respondent to his position, we hold that the court gravely abused its discretion in issuing its injunctive order of November 16, 1965 and the writ of preliminary mandatory injunction of November 18, 1965.

2. The propriety and legality of the preliminary mandatory injunction aside, the court should have dissolved it following the promulgation of administrative order 171.

The basic assumption underlying the issuance of the writ of preliminary mandatory injunction, be it recalled, was that Varela's transfer from one office to another, while his administrative case was still pending, was equivalent to removal without cause. For although his petition contains allegations which in a way disparage the administrative proceedings against him, yet the main thrust of his case was that his assignment to various offices

all of which are of a lower rank than his former position, was a virtual removal without cause. As stated earlier, it was not until after the promulgation of administrative order 171 that the petitioner directly challenged the legality of the administrative proceedings by filing a so-called supplementary petition. That is why the injunctive order and the writ of mandatory injunction issued pursuant thereto were directed not against the administrative proceedings but only against Varela's detail from one office to another. The result was that the administrative case proceeded to final judgment without any interruption from the court, culminating in the promulgation of administrative order 171. The issuance, therefore, by the court of the order of January 4, 1966, which maintained the writ of preliminary mandatory injunction, was a negation of the corollary assumption implicit in the earlier order that the injunction issued thereunder was to last only for as long as Varela was not adjudged guilty in the administrative case.

Indeed, the situation here is similar to that of *City of Butuan v. Ortiz*,^[3] in which a court of first instance rendered judgment ordering the reinstatement of the petitioner pending termination of the administrative case filed against him upon the court's finding that his suspension had been continued for more than sixty days. However, the petitioner did not ask for the execution of the judgment until after the administrative case had been decided against him and he was about to be removed from the service. This Court held that execution of the judgment of the court was barred by the decision of the Civil Service Commissioner.

"It is true that the judgment was correct because the suspension was ordered on March 11, 1954, and by June 1, 1954, when the petition for mandamus was filed in the Court of First Instance, more than 60 days have already expired without the case having been decided. It is also true that the decision of the Court of First Instance in said special civil action continued to be executory when the motion for execution was presented, because the 5-year period within which a decision of the court may be enforced by motion had not yet expired, but as it was alleged and shown in the motion for the reconsideration of the order granting execution, that the Commissioner of Civil Service had already affirmed the decision of the Municipal Board finding Soriano guilty on November 29, 1954, the right to reinstatement was barred by the decision of the Commissioner of Civil Service. ... In other words, a supervening cause or reason had arisen which has rendered the decision of the court ordering reinstatement, no longer enforceable."^[4]

The "supervening cause" was a superior cause, superseding the basis of the judgment and making its execution untenable.

It is true that the President's order is not as yet final because Varela filed a motion for reconsideration,^[5] but it is equally true that decisions of this nature may be executed even before they become final. The reason for this is that public interest would be jeopardized if the Government were forced to retain in its service, during the pendency of the motion for reconsideration (or appeal), an employee who has been adjudged unfit for retention in the service. On the other hand, by making execution a matter of administrative discretion, public interest would be properly subserved and safeguarded, without prejudice, in the event of exoneration, to the employee's reinstatement with backpay and full restoration of his rights and privileges.^[6]

ACCORDINGLY, the petition is granted, and the orders of November 16, 1965, January 4, 1966 and January 25, 1966, and the writ of preliminary mandatory injunction of November 18, 1965 are set aside, without pronouncement as to costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, and Teehankee, JJ., concur.

Barredo, J., did not take part.

[1] *Manila Elec. & R.R. Co. v. Del Rosario*, 22 Phil. 433, 437 (1912); accord, *Lemi v. Valencia*, L-20768, Feb.

28, 1963, 7 SCRA 469; Bautista v. Barcelona, 100 Phil. 1078 (1957); Coronado v. Tan, 96 Phil. 729 (1955); Villadores v. Encarnacion, 95 Phil. 913 (1954).

[2] Cf. Quiocho v. Abrera, 64 O.G. 13334 (1967).

[3] L-18054, Dec. 22, 1961, 3 SCRA 659.

[4] Id., 3 SCRA at 661.

[5] The record does not show what action has been taken by the Office of the President on this motion for reconsideration. (Parenthetically, it is to be noted that some of the issues posed in the supplemental petition filed by Varela on January 31, 1966 could and should have been raised in his original petition for certiorari and mandamus of November 11, 1965, and all the issues, in his motion for reconsideration of the President's Administrative Order 171 of December 21, 1965.

[6] Civil Service Act of 1959, sec. 35; Cabigao v. Del Rosario, L-18379, Oct. 31, 1962, 6 SCRA 578; see also Batungbakal v. National Development Co., 93 Phil. 182 (1953); Tabora v. Montelibano, 93 Phil. 800 (1956).

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