

JOAQUIN P. NEMENZO, PLAINTIFF-APPELLEE, VS. BERNABE SABILLANO, DEFENDANT-APPELLANT.

G.R. No. L-20977. September 07, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Zamboanga del Sur.

On March 9, 1955, the plaintiff, a civil service eligible, was appointed corporal in the police force of the municipality of Pagadian, Zamboanga del Sur, vice Floro D. Sandalo, by the then Municipal Mayor, Francisco Consolacion. The appointment was approved by the Assistant Executive Secretary (by authority of the President) with the notation, "subject to the usual physical and medical examination.

In the elections of November 1955 the defendant, Bernabe Sabillano, won over Mayor Francisco Consolacion. Immediately upon his assumption of office on January 1, 1956 he terminated the services of the plaintiff, among other members of the police force, effective upon the close of office hours on the same date, giving the following reasons for his action, to wit:

"(1) That someone who has my confidence and who is more qualified than you are is applying for your position.

"(2) That your appointment by Ex-Mayor Francisco Consolacion was illegal as you replaced the former occupant who is arbitrarily removed from office without cause, hence a violation of the Civil Service Law and Regulations.

"(3) That the former occupant whom you replaced has all the necessary qualification for the position, he being a graduate of Associate in Arts, a Third Grade Civil Service Eligible, and

"(4) That under Republic Act No. 1363, the former occupant has the preferential rights to appointment in government position because he is a veteran of the last World War."

The plaintiff immediately brought the matter to the attention of the Presidential Complaints and Action Committee (PCAC) in the Office of the President. Subsequent action relayed it to the Bureau (now Commission) of Civil Service, which rendered its decision on May 30, 1956, as follows:

"Touching on the matter regarding Mr. Nemenzo's removal from the service, and his replacement by Mr. Sandalo, this Office believes that the removal of Mr. Nemenzo, who is an eligible, was without cause, and as such, illegal, pursuant to the provision of paragraph II (a) of Provincial Circular (Unnumbered) dated April 3, 1954, which reads in part as follows:

'a. Classified positions occupied by eligibles.— The classified position in the local government are supposed to be filled with civil service eligibles (Sec. 672, Revised Administrative Code). Incumbents of these positions who are civil service eligibles, can not be removed except for cause as provided by law. . . '

Pursuant to the above decision the defendant reinstated the plaintiff to his former position on July 19, 1956. In the meantime the plaintiff and the other policemen who had been removed with him had filed a petition for quo warranto in this Court, but the petition was dismissed on August 2, 1956, "without prejudice to action, if any, in the Court of First Instance of Zamboanga del Sur, there being a judge already appointed therefor."

After his reinstatement the plaintiff filed a claim for the payment of his salary out of government funds for the period from January 1 to July 18, 1956, inclusive. The Commissioner of Civil Service, commenting on the plaintiff's claim in his 3rd Indorsement dated November 25, 1956, expressed the view "that Corporal Joaquin Nemenzo is entitled to payment of his salary corresponding to the whole period of his illegal separation." The Auditor General concurred with the Commissioner of Civil Service, but was of the opinion "that the salary corresponding to the period during which Mr. Joaquin Nemenzo was deprived of his position of corporal of the police force of Pagadian, Zamboanga del Sur, is a personal liability of Mayor Bernabe G. Sabillano who caused said illegal ouster. . . ." On the basis of the said opinion the Executive Secretary refused to authorize payment from government funds, and at the same time invited attention to an unnumbered Provincial Circular issued by his office on February 9, 1955, regarding payment of salaries during the period of illegal separation of civil service employees. The said circular states:

"Office of the President
of the Philippines

Provincial Circular

(Unnumbered)

February 9, 1955

SUBJECT: Payment of salaries during the period of illegal separation of
civil service employees—Officials responsible for

It has been observed that civil service employees who, under the Civil Service Law, may only be removed or suspended or otherwise disciplined by the Commissioner of Civil Service for cause as provided by law as a result of administrative proceedings instituted against them, are oftentimes dismissed arbitrarily and without cause only to be later on reinstated. In order, therefore, to protect the interest of the government and to avoid unnecessary payment by the government of salaries during the period of illegal separation of civil service employees, where no services have been rendered at all to the detriment of the government, provincial governors, city and municipal mayors, who separate or remove from the service employees without cause and without instituting against them administrative proceedings as required by Civil Service Laws and Regulations are hereby made personally responsible and liable for the payment of the salaries of said employees in the event they are reinstated and the payment of their salaries corresponding to the periods they have been out of the service is ordered.

Provincial Governors are hereby directed to transmit the contents of this circular to all municipal and municipal district mayors in their respective jurisdictions.

By authority of the President:

(SGD.) FRED RUIZ CASTRO

Executive Secretary"

Thereafter the plaintiff made several demands on the defendant for the payment of his back salaries—the first on June 3, 1959 and the last on August 24, 1959—but to no avail. On September 4, 1959 he filed a complaint in the Justice of the Peace Court of Pagadian, Zamboanga del Sur, for the recovery of the amount of his claim. Judgment was rendered in his favor, and the defendant went to the Court of First Instance of Zamboanga del Sur on appeal. Judgment there was again for the plaintiff, as follows:

"WHEREFORE, Judgment is hereby rendered in favor of the plaintiff and against the defendant:

"1. Ordering the defendant to pay to plaintiff the sum of P725.00 corresponding to plaintiff's back salaries from January 1, 1956 to July 18, 1956, with 6% interest thereon per annum from the filing of the complaint on September 4, 1959, until fully paid;

"2. Ordering the defendant to pay to plaintiff the sum of P200.00 as attorney's fees; and

"3. To pay costs of suit."

The case came to us directly on appeal by the defendant.

Appellant alleges that the trial Court erred:

"(1) In not dismissing this case for lack of jurisdiction; (2) In not dismissing this case on the ground of laches; (3) In not dismissing the complaint in this case for being fatally defective; (4) In condemning defendant to pay the claim of plaintiff, as well as attorney's fees; and (5) In not dismissing this case with costs against plaintiff."

In connection with the first assignment of error appellants' position is that while ostensibly this action is for the collection of money it is in effect an action to enforce the decision of the Commissioner of Civil Service and the indorsement of the Auditor General, as well to determine the legality of the action of appellant in dismissing appellee from the service. In view thereof, appellant points out, the Justice of the Peace Court of Pagadian had no original jurisdiction to try the case, and consequently the Court of First Instance acquired no jurisdiction on appeal.

The argument has no merit. The decision of the Commissioner of Civil Service referred only to the illegality of appellee's dismissal. He did express his opinion, in another indorsement to the Auditor General on November 25, 1957, to the effect that appellee was entitled to collect his salary during the period of his ouster, but it was not in the nature of a decision, and the Auditor General, who was the official empowered to rule on his claim for payment from government funds, precisely decided adversely to him. This action, therefore, could not be for the enforcement of that ruling.

Neither does this case involve the determination of the legality or illegality of appellee's dismissal by appellant. That question is a closed one, having been passed upon and decided by the Commissioner of Civil Service. Appellant did not contest that decision, and in fact implemented it by reinstating appellee on July 19, 1956.

This case, in fine, involves an ordinary money claim, and was within the original jurisdiction of the Justice of the Peace Court where it was filed, considering the amount involved.

Appellant next points out that it took appellee more than three years from the date of his reinstatement before he filed the complaint. The period was still within the statutory limit. The

action being upon an injury to the rights of appellee for having been illegally dismissed from the service, the limitation is four years from the day the cause of action arose, as provided in Article 1146 of the Civil Code.

Appellant also invokes laches on the part of appellee. This plea cannot prosper either. Appellee first filed his claim with the government and did so without delay. The claim went through the usual government channels, as shown by the 3rd Indorsement of the Commissioner of Civil Service, dated November 25, 1956; the 6th Indorsement of the Auditor General dated April 7, 1958; the 7th Indorsement of the Executive Secretary, disapproving the claim, dated March 31, 1959; and the 8th Indorsement of the Provincial Governor, dated May 8, 1959. Appellee was advised of the action taken on his claim when he was furnished a copy of this last indorsement. Thereupon he made several demands on appellant, and when the latter failed to pay him he filed the complaint on September 4, 1959. Under the circumstances, no undue delay in the assertion of his rights can be attributed to appellee.

The third error assigned is that the complaint was defective because it did not include the municipality of Pagadian as party-defendant. Appellant, however, is sued on his personal liability as the one responsible for appellee's illegal dismissal. No relief is sought against the municipality of Pagadian, and therefore it is not a proper party herein.

Under the fourth assignment of error, appellant tries to justify the dismissal of appellee on several grounds. But as we have stated earlier, that question is already settled by the decision of the Commissioner of Civil Service, culminating in the reinstatement of appellee in the service.

Referring to the petition for quo warranto which was instituted in this court by appellee, and later dismissed "without prejudice to action if any, in the Court of First Instance," appellant says that appellee's failure to file such action constitutes a bar to the Present one. Such action would be to contest the title to the office, and if it was not refiled in the Court of First Instance it was because there was no longer any need for it, since appellee had already been reinstated at the time his petition was dismissed by us.

Appellant was correctly adjudged liable in this case. His act of dismissing appellee without previous administrative investigation and without justifiable cause, as held by the Commissioner of Civil Service, is clearly an injury to appellee's rights. Appellant cannot hide under the mantle of his official capacity and pass the liability to the municipality of which he was mayor. There are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts.

The judgment appealed from is affirmed, with costs.

Conception, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed.

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