

**CITY OF BASILAN, REPRESENTED BY HONORABLE LEROY S. BROWN,
IN HIS CAPACITY AS CITY MAYOR, PETITIONER, VS. HONORABLE
RUFINO HECHANOVA, IN HIS OFFICIAL CAPACITY AS SECRETARY
OF FIN...**

G.R. No. L-23841. August 30, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was the failure to accord acceptance to a city ordinance abolishing the position of Assistant City Auditor that led to this action for prohibition filed by the City of Basilan, represented by its Mayor, Leroy S. Brown. The justification for the refusal of both respondents, Rufino Hechanova, then Secretary of Finance, now deceased, and Vicente Fabian, the City Treasurer of the City of Basilan,[1] was based on the nullity of the alleged ordinance as the position in question is under the control of the Auditor General, a constitutional official provided for by the Constitution itself, its national character being further evidenced by its inclusion in a Republic Act,[2] amendatory of the Administrative Code. Moreover, its abolition was vitiated by bad faith, being the result of partisan maneuverings. It thus appears, therefore, that this petition with a plea that respondent officials be prohibited from acting contrary to the terms of the ordinance, abolishing such position, is hardly impressed with merit. We dismiss.

The facts are not in dispute. The City Council of Basilan City parsed an ordinance, which took effect on July 1, 1954, creating the position of Assistant City Auditor.[3] To that position, respondent Miguel E. Antonio was appointed. He discharged the duties appertaining thereto and collected the emoluments attached to the office.[4] On July 1, 1964, the City of Basilan enacted another ordinance abolishing the office of Assistant City Auditor. This it did by deleting such post from the plantilla and failing to provide therein the compensation for the office.[5] Respondent Antonio did not consider such ordinance as of any force or effect. He continued holding on to his position.[6] The other respondents, one of whom was the then Secretary of Finance, sustained him in that posture. It was their stand that there was no valid abolition of the office.[7] Hence this proceeding.

The City of Basilan, as set forth at the outset, has not made out a case for prohibition. Far from it.

1. The Office of the Assistant City Auditor is not just a municipal creation. It is part and parcel of a highly responsible task, national in scope, that of auditing. The 1935 Constitution left no doubt on that score: "The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the Government or the provinces or municipalities thereof. * * *"[8] Under the present Constitution, there is created an independent Commission on Audit composed of a Chairman and two Commissioners, but the functions remained the same.[9] Moreover, as pointed out by respondents, provision for such an office was included, as noted earlier, in a statute.[10] A City Auditor, according to the leading case of *Francia vs. Pecson*[11] "is not a city government

official or employee, but an officer of the General Auditing Office, under the direct supervision and control of the Auditor General." [12] How then may the abolition of such an office be left to the sole uncontrolled discretion of the City of Basilan? That would be tantamount to a permission for a city government to intrude into a matter not only of national but of constitutional significance. Moreover, it is equally well-settled, from the leading case of *United States vs. Josen*, [13] that whenever there is a conflict of an ordinance with a statute, the former must give way. Such a principle has since then been consistently adhered to. [14] The then respondent Secretary of Finance was thus fully justified in disregarding the ordinance relied upon by the City of Basilan.

2. Even if the barrier to the acceptance of the validity of such ordinance were thus not insurmountable, there is this other decisive consideration. The reply memorandum of respondent Hechanova is quite indicative of the partisan motive that led to the abolition of the position. It thus suffers from congenital infirmity. To be lawful, an ordinance of that character must not be tainted by bad faith. That much is beyond question. So it has been from *Gacho vs. Osmeña* [15] to *Bendanillo, Sr. vs. Provincial Governor*. [16] In the leading case of *Cruz vs. Primicias, Jr.*, [17] this Court, through Justice J.B.L. Reyes, enunciated clearly the controlling principle. Thus: "As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void * * *"[18]

WHEREFORE, the petition is dismissed. No costs.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., took no part.

[1] The other respondent is the occupant of the position of Assistant City Auditor, Miguel E. Antonio.

[2] Republic Act No. 3719 (1963) amending Section 2067-B of the Administrative Code. The Republic Act likewise amended an earlier statute, Republic Act No. 840 (1953).

[3] Cf. Petition, par. 3. The ordinance referred to is Ordinance No. 161 of the City of Basilan.

[4] Cf. *Ibid*, par. 5.

[5] Cf. *Ibid*, par. 6. The reference is to Ordinance No. 406.

[6] Cf. *ibid*, par. 7.

[7] Cf. *Ibid*, par. 8.

[8] Article XI, Section 2 of the 1935 Constitution.

[9] Cf. Article XII, D, Section 2, par. (1) of the Constitution.

[10] Republic Act No. 3719 (1963) amending Section 2067-B of the Administrative Code.

[11] 87 Phil. 100 (1950).

[12] *Ibid*, 111.

[13] 26 Phil. 1 (1913).

[14] Cf. *United States vs. Tamparong*, 31 Phil. 321 (1915); *United States vs. Pacis*, 31 Phil. 524 (1915); *United States vs. Cristobal*, 34 Phil. 825 (1916); *Tajanlangit vs. Penaranda*, 37 Phil. 155 (1917); *United States vs.*

Salaveria, 39 Phil. 102 (1918); Central Capiz vs. Ramirez, 40 Phil. 883 (1920); Abad vs. Evangelista, 58 Phil. 461 (1933); People vs. Vera, 65 Phil. 56 (1937); Vega vs. Municipal Board, 94 Phil. 949 (1954); Chua Lao vs. Raymundo, 104 Phil. 302 (1958); Heras vs. Treasurer of Quezon City, 109 Phil. 930 (1960); Cuneta vs. Court of Appeals, L-13264, Feb. 28, 1961, 1 SCRA 663.

[15] 103 Phil. 837 (1958).

[16] L-28614, January 17, 1974, 55 SCRA 34.

[17] L-28573, June 13, 1968, 23 SCRA 998.

[18] The other cases between Gacho and Bendanillo follow: Briones vs. Osmena, 104 Phil. 588 (1958); Gonzales vs. Osmena, L-15901, Dec. 30, 1961.

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