

SEVERINO UNABIA, PETITIONER AND APPELLEE, VS. THE HONORABLE CITY MAYOR, CITY TREASURER, CITY AUDITOR AND THE CITY ENGINEER, RESPONDENTS AND APPELLANTS.

G.R. No. L-8759. May 25, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu ordering respondents to reinstate petitioner as foreman (capataz), Garbage Disposal, Office of the City Engineer, Cebu City, at P3.90 per day from the date of his removal.

The case was submitted to the court for decision on a stipulation of facts the most pertinent of which are as follows: Petitioner was a foreman, Group Disposal, Office of the City Health Officer, Cebu City, at P3.90 per day. On June 16, 1953, the City Mayor removed him from the service and his place was taken by Perfecto Abellana, and latter by Pedro E. Gonzales. Before June 16, 1953, the Group Disposal Division, including personnel, was transferred from the City Health Department to the Office of the City Engineer. In April, 1954, petitioner sought to be reinstated but his petition was not headed by the respondents.

On the basis of the above facts, the Court of First Instance of Cebu held that petitioner is a person in the Philippine Civil Service, pertaining to the unclassified service (section 670, Revised Administrative Code as amended), and his removal from his position is a violation of section 694 of the Revised Administrative Code and section 4 of Art XII of the Constitution. The court further held that the notation at the bottom of petitioner's appointment to the effect that his appointment is "temporary pending report from the Government Service Insurance System as to the appointee's physical and medical examination" did not make his appointment merely temporary.

First error assigned on this appeal is the failure to include in the complaint, the names of the persons holding the Offices of City Mayor, City Treasurer, City Auditor and City Engineer, all of Cebu City, they being designated only by their official positions. This is no reason for a reversal of the proceedings and of the judgment. As said persons were sued in their official capacity, it is sufficient that they be designated by their official positions.

It is also contended that the use of capitals in the words "Civil Service" in section 1 and 4 of Article XII of the Constitution and the use of small letters for the same words, "civil service," in section 670, Revised Administrative Code, indicates that only those pertaining to the classified service are protected in the above-mentioned sections of the Constitution. We see no validity in this argument. Capital "C" and "S" in the words "Civil Service" were used in the Constitution to indicate the group. No capitals are used in the similar provisions of the Code to indicate the system. We see no difference between the use of capitals in the former and of small letters in the latter. There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong to the Civil Service; hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so

designated because the nature of their work and qualifications are not subject to classification, which is not true of those appointed to the classified service. This can not be a valid reason for denying privileges to the former that are granted the latter.

As the removal of petitioner was made without investigation and without cause, said removal is null and void and petitioner is entitled to be reinstated to the position from which he was removed. (*Lacson vs. Romero*, 84 Phil., 740, 47 Off. Gaz. [4], 1778)

There is, however, an, additional objection to the reinstatement raised in the memorandum submitted by the attorneys for the respondents in lieu of oral argument. This is the fact that as petitioner was removed on June 16, 1953 and only filed his petition on July 1, 1954, or after a delay of one year and 15 days, petitioner should no longer be allowed to claim the remedy, he being considered as having abandoned his office.

We can not or should not overlook this objection. If an employee is illegally dismissed, he may conform to such illegal dismissal or acquiesce therein, or by his inaction and by sleeping on his rights he may in law be considered as having abandoned the office to which he is entitled to be reinstated. These defenses are valid defenses to an action for reinstatement. To that effect is our decision in the case of *Mesias vs. Jover, et al.*, 97 Phil., 899, decided November 22, 1955. In that case we cited with approval *Nicolas vs. United States*, 66 L. Ed. 133, and the following ruling therein contained:

"A person illegally dismissed from office is not thereby exonerated from the obligation to take steps for his own protection, and may not for an unreasonable length of time, acquiesce to the order of removal * * * and then sue to recover the salary attached to the position. In case of unreasonable delay he may be held to have abandoned title to the office and any right to recover its emoluments." (*Mesias vs. Jover, supra.*)

Difficulty in applying the principle lies in the fact that the law has not fixed any period which may be deemed to be considered as an abandonment of office. In the abovesited case decided by the Federal Supreme Court of the United States, 11 months was considered an unreasonable delay amounting to abandonment of office and of the right to recover its emoluments. However, we note that in actions of quo warranto involving right to an office, the action must be instituted within the period of one year. This has been the law in the island since 1901, the period having been originally fixed in section 216 of the Code of Civil Procedure (Act No. 190). We find this provision to be an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. There must be stability in the service so that public business may be unduly retarded; delays in the statement of the right to positions in the service must be discouraged. The following considerations as to public officers, by Mr. Justice Bengzon, may well be applicable to employees in the civil service:

"Furthermore, constitutional rights may certainly be waived, and the inaction of the officer for one year could be validly considered as waiver, i.e., a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases. "And there is good justification for the limitation period; it is not proper that the title to public office should be subjected to continued uncertainty, and the peoples' interest requires that such right should be determined as speedily as practicable." (*Tumulak vs. Egay*, 46 Off.Gaz., 18], 3693, 3695.)

Further, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that title Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although

illegally, and another, for one not actually rendering service although entitled to do so. We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office.

One other point, merely procedural, needs to be considered. This is the fact that the objection as to the delay in filing the action is raised, for the first time in this Court, not having been raised in the court below. The above circumstance (belated objection) would bar the consideration if it were a defense merely. However, we consider it to be essential to the petitioner's right of action that the same is filed within a year from the illegal removal. The delay is not merely a defense which may be interposed against it subject to waiver. It is essential: to petitioner's cause of action and may be considered even at this stage of the action.

"We would go farther by holding: that the period fixed in the rule is a condition precedent to the existence of the cause, of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss." (Abeto vs. Hodas, 46 Off. Gaz., [3], 930, 932.)

A defense of failure to state a cause of action is not waived by failure to raise same as a defense (section 10, Rule 9),

For all the foregoing considerations, we hold that as petitioner was dismissed on June 16, 1953 and did not file his petition for mandamus for his reinstatement until July 1, 1956, or after a period of one year, he is deemed: to have abandoned his right to his former position and is not entitled to reinstatement therein by mandamus. Without costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Reyes, J. B., and Endencia, JJ., concur.

DISSENTING:

CONCEPCION, J.,

I dissent. Delay in bringing an action can have no more effect than that of prescription of action or laches. It affects merely the "enforcement" of a right of action, not the existence thereof. The period of one year for the commencement of the auction in quo warranto proceedings is prescribed in the Rules of Court which would be unconstitutional if the same should seek to affect the cause of action, for then they would impair substantive rights.

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