

## **CRISANTO CORNEJO, PETITIONER, VS. THE HONORABLE SECRETARY OF JUSTICE, THE AUDITOR GENERAL, THE NATIONAL TREASURER, THE CITY MAYOR OF PASAY, THE CITY COUNCIL OF PASAY CITY, THE C...**

*G.R. No. L-32818. June 28, 1974*

Ponente: ESGUERRA, J.

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### **ESGUERRA, J.:**

In this original action for mandamus, with prayer for a writ of preliminary injunction, petitioner seeks to compel the respondents to order his reinstatement to the position of Special Counsel of Pasay City, and/or Fourth Assistant City Fiscal (the latter position, according to petitioner, being now the equivalent rank of Special Counsel of Pasay City), and for payment to him of back salaries. This Court did not issue the preliminary writ prayed for.

The facts of this case are substantially as follows:

On April 4, 1960, Secretary of Justice Alejo Mabanag appointed petitioner to the position of Special Counsel created by the Municipal Board of Pasay City to assist the City Attorney in the discharge of his duties, with an annual compensation of P3,600.00, payable by said City. Petitioner took his oath of office on April 6, 1960. Subsequently, a promotional appointment was extended to him increasing his salary to P6,000.00 per annum, effective July 1, 1960.

Sometime in December 1963, a certain Teofilo L. Amante filed an administrative complaint for dishonesty and willful failure to pay debts against petitioner with the Department of Justice. The complainant charged that on November 21, 1962, petitioner executed in favor of the complainant real estate and chattel mortgages to secure the payment of a loan of P5,000.00; that one of the mortgaged properties turned out to have been previously mortgaged by petitioner to another person who extrajudicially foreclosed the mortgage and the property was sold by the sheriff at public auction; and that after the mortgage in favor of the complainant had been executed, petitioner, without the complainant's knowledge and consent, executed in favor of another person a deed of sale with right of repurchase over one of the mortgaged properties, which property was, subsequently, again mortgaged by petitioner to still another person.

An investigation was conducted by the Department of Justice through State Prosecutor Alfredo Laya, who recommended petitioner's dismissal. On May 19, 1966, the Commissioner of Civil Service, concurring in the findings and recommendation of the investigator, rendered a decision finding petitioner guilty of dishonesty and willful failure to pay just debts and considering him resigned from the service effective on his last day of duty with pay. ...

On July 1, 1966, respondent Adelino A. Sanchez was appointed by the Secretary of Justice through Undersecretary Claudio Teehankee to the position of Special Counsel for Pasay City, deemed vacated on account of petitioner's dismissal. The appointment was approved by the Commissioner of Civil Service as provisional under Sec. 24(c)

of Republic Act No. 2260, effective upon its approval and Sanchez' assumption of office, but not earlier than August 23, 1966.

On September 17, 1966, petitioner filed a motion for reconsideration of the decision of the Commissioner of Civil Service on the grounds that he was denied due process of law and that the decision was not supported by evidence. On March 7, 1969, the Commissioner rendered a resolution setting aside his decision of May 19, 1966, and ordering anew investigation on the ground that in the original investigation petitioner had been denied due process. Pending reinvestigation, petitioner sought his reinstatement.

The reinvestigation of the case was assigned by the Department of Justice to State Prosecutor Leonardo B. Canares, who, in a memorandum to the Secretary of Justice dated February 24, 1970, recommended "favorable action on the petition for reinstatement to any of the prosecution service under the Department pending reinvestigation of the case," because petitioner had never been preventively suspended from office, and the decision considering him resigned had been set aside by the Commissioner of Civil Service.

This was followed on March 11, 1970, by Cañares' "Report, Findings and Recommendation," wherein he recommended "the dismissal of the instant case for insufficiency of evidence," and petitioner's exoneration. The said report, copy of which was furnished the Civil Service Commissioner, was transmitted to the Secretary of Justice under a covering letter of even date. The report was not, however, approved by the Secretary of Justice.

On April 22, 1970, the Commissioner of Civil Service, in a second endorsement on State Prosecutor Cafiarez' Memorandum of February 24, 1970, recommending petitioner's reinstatement, granted petitioner's request for reinstatement. On May 4, 1970, Mayor Jovito O. Claudic of Pasay City in a third endorsement, addressed to the City Fiscal, referred the matter for implementation of the Commissioner's reinstatement order.

In an endorsement to the City Auditor dated May 29, 1970, the City Fiscal stated that "as far as this office is concerned, it is Mr. Adelino A. Sanchez who is officially and actually holding the position [of Special Counsel] and who renders service up to the present." And in what appears to be a fourth endorsement on Caftarez' memorandum, the said City Fiscal referred the matter to Secretary of Justice Felix V. Makasiar, who, in a fifth endorsement dated June 16, 1970, stated that "the case of Mr. Crisanto Cornejo is already a closed matter," not only because his motion for reconsideration of the Commissioner's decision was filed beyond the thirty-day period prescribed in Section 36 of Republic Act No. 2260, but also because he must "be deemed to have abandoned his office by his failure to seasonably take the appropriate remedy to secure his reinstatement, first, when his motion for reconsideration [assuming that it was really filed on time] was not acted upon for years and, second, when that Commission set aside its May 19, 1966, decision."

In the meantime, a voucher for P1,500.00 corresponding to the back salaries of petitioner for three months from April 1 to June 30, 1966, was approved by the City Treasurer, the City Auditor and the City Fiscal, of Pasay City, by virtue of which petitioner received the aforementioned amount on June 10, 1970.

On July 3, 1970, the City Fiscal, in an indorsement to the City Mayor, opined that the requested reinstatement of petitioner "cannot be done and therefore ought to be denied by that Office on the basis of the 5th indorsement of Hon. Felix V. Makasiar, Secretary of Justice, x x x."

Subsequently, on October 12, 1970, the Commissioner of Civil Service wrote a letter to the Secretary of Justice, explaining in the said letter that "the approval of Mr. Sanchez' appointment x x x is subject to the conditions that x x x there is no pending protest against this appointment nor any decision by competent authority that will adversely affect the approval of this appointment"; that the approval of Mr. Sanchez appointment "was subject to the implied condition that the position would ultimately be vacated by Mr. Cornejo," and that the decision

considering Mr. Cornejo resigned had been set aside, so that he [Cornejo] should now be reinstated to his position. The Commissioner ruled that the approval of the appointment of Mr. Adelino A. Sanchez is hereby revoked effective upon receipt hereof," and "Mr. Cornejo is reinstated as Special Counsel in Mr. Sanchez's stead without prejudice to the outcome of the reinvestigation of the case against Mr. Cornejo."

On October 29, 1970, petitioner addressed a letter to the Secretary of Justice making a final bid for reinstatement, otherwise he would be constrained to take the matter to court. On November 23, 1970, Secretary of Justice Vicente Abad Santos, in an endorsement of the letter of the Commissioner of Civil Service of October 12, 1970, refused to reinstate petitioner, giving as reasons therefor the finality of the decision dismissing petitioner from the service; that the appointment of Sanchez had already become irrevocable, and that petitioner's reinstatement would involve the extension to him of another appointment by the Commissioner of Civil Service who is without power to appoint a Special Counsel in Pasay City.

On November 23, 1970, petitioner filed the present petition.

The outcome of this case hinges on the resolution of the following issues:

1. Whether or not petitioner's motion to reconsider the decision of the Commissioner of Civil Service was timely filed; and
2. Whether or not petitioner was accorded due process of law in the original investigation of the administrative complaint filed by Teofilo Amante conducted by State Prosecutor Alfredo Laya;
3. Whether this action was timely filed by the petitioner.

I.

As regards the first issue, Section 36 of Republic Act No. 2260 [Civil Service Act of 1959] and the Civil Service Rules provide that a motion for reconsideration of the decision rendered by the Commissioner of Civil Service may be filed within thirty [30] days after receipt of the decision by the party adversely affected.

It is undisputed that petitioner filed his motion for reconsideration on September 17, 1966. What is debated is the date on which petitioner received a copy of the Commissioner's decision. Petitioner, on the one hand, contends that he received it on August 18, 1966, while respondents on the other hand, allege that petitioner received it on June 8, 1966. This Court is inclined to uphold the respondents on this point.

Annex "3" of the Answer filed by the respondent officials of Pasay City is a certification by the Chief of the Registry Section of the Pasay City Post Office, to wit:

"Registered Letter No. 3624 [containing the decision of the Commissioner of Civil Service dated May 19, 1966], addressed to FISCAL CORNEJO, 2435 Tramo St., Pasay City, was duly delivered by our Mail Carrier Mr. BRAULIO RECILLO and received by one ROSY CORNEJO, Fiscal CORNEJO'S Household, on June 8, 1966."

Annex "4" of the Memorandum filed by respondents with this Court is a registry return receipt signed by Rosy Cornejo showing that on June 8, 1966, she received a letter from the Office of the City Fiscal of Pasay City addressed to petitioner.

Annex "6" of the same Memorandum is a letter by the Administrative Officer of the said fiscal's office addressed to the City Fiscal in which it appears that on one occasion, her registered letter addressed to petitioner asking for the return of all pending criminal records in petitioner's possession, was received by one Rosy Cornejo.

In their Memorandum, respondent officials insist that the subject matter of the postal official's certification and of

the registry return receipt refer to the copy of the Commissioner of Civil Service decision of May 19, 1966.

Petitioner flatly denies that he ever received a copy of the decision from any of respondents, or that a certain Rosy Cornejo was ever a member of his household during the last sixteen 16. years. He does not explain, however, what, if any, was contained in the mail matter received for him on June 8, 1966, That he did receive a mail matter on said date, cannot be denied in the face of the certification by the post office and of the registry return receipt. The only logical conclusion in the premises is that petitioner received a mail matter from respondent City Fiscal on June 8, 1966, and that the same was, as declared by respondents, a copy of the Commissioner's decision.

Petitioner claims that the first and only time he received a copy of the decision was on August 18, 1966, "when he personally dropped by the Civil Service Commission and inquired about the Administrative Case No. R-29156, for which he personally signed in the records of said case." In his 6th endorsement of January 14, 1971, to the Secretary of Justice, the Commissioner of Civil Service states that Mr. Cornejo received notice of the decision only on August 18, 1966. That petitioner received notice of the decision in question from the Civil Service Commission on August 18, 1966, may be true, but this does not obliterate the fact that he also received notice earlier by mail through the City Fiscal, or on June 8, 1966, as asserted by respondents and borne out by the post office certification and the registry return receipt. It will be noticed that on July 1, 1966, respondent Sanchez' appointment as Special Counsel "vice Crisanto Cornejo, dismissed," to be effective not earlier than August 23, 1966, was prepared by the Department of Justice and signed by then Undersecretary Teehankee. This shows that before July 1, 1966, the Department of Justice had already received notice of the Commissioner's decision separating the petitioner from office. As said decision is dated May 19, 1966, there is reason to believe that the Department of Justice, either directly or through respondent City Fiscal, received copy thereof earlier than June 8, 1966. Thus, respondent City Fiscal, petitioner's superior, was in a position to send a copy of the decision to petitioner who, as shown by the evidence, received it from the post office on June 8, 1966, through Rosy Cornejo, a person who appears to be the one usually receiving mail matters for petitioner.

Consequently, the decision of the Commissioner of Civil Service considering petitioner resigned from the service became final on July 8, 1966. Hence, the proceedings on petitioner's case taken after said date, including those that relate to petitioner's motion for reconsideration and the resolution of the Commissioner of Civil Service setting aside his May 9, 1966 decision, are without any legal effect. The reinvestigation of the case conducted by Special Prosecutor Canarez was a mistake that cannot prejudice the State since it is in violation of an express provision and policy of the law. [See *Chaves, Sr. v. Mathay*, L-29311, February 27, 1971, 37 SCRA 775, 782.].

## II

The resolution of the second issue whether or not due process of law was observed in the original investigation conducted by State Prosecutor Alfredo Laya is of course of paramount importance, for if it is shown that petitioner was denied due process of law, the decision of the Commissioner of Civil Service considering petitioner resigned, shall be nullified and set aside despite our conclusion that petitioner's motion to reconsider was filed beyond the reglementary period.

In the motion for reconsideration filed by petitioner with the Civil Service Commission, he alleged that on April 10, May 28, November 6 and 16, 1964, State Prosecutor Alfredo Laya conducted the investigation of the administrative case against him in his absence and without prior notice. However, he admitted that he was present at the hearing of July 14, 1964. According to him he was not notified thereof and it was only by accident that he came to know about it. At the said hearing, petitioner signed a note acknowledging an indebtedness of P5,000.00 to the complainant and promising to pay the same on or about August 15, 1964.

The respondents assert that the hearings was conducted after due notice to petitioner, which was not even

necessary in view of petitioner's failure to elect a formal investigation as provided in the Civil Service Laws and Rules.

It is Our opinion that petitioner was not denied due process of law in the investigation conducted by State Prosecutor Laya. He failed to elect a formal investigation of the sworn complaint filed against him by Amante. In fact he did not even file an answer to the complaint although he was duly furnished with a copy thereof. He was required to file an answer and in the letter to that effect he was asked to indicate whether he wanted to have. fc. formal investigation. Three [3] pertinent annexes are attached to respondents' Memorandum to show this fact. Annex "1" is the first indorsement, dated December 23, 1963, of the Secretary of Justice signed by Chief Prosecuting Attorney Emilio A. Gancayco, which reads in part:

"Respectfully referred through the City Fiscal to Assistant City Fiscal Crisanto Comejo, Pasay City, requesting him to submit an answer to the charge contained in the verified complaint with documentary evidence of Teofilo L. Amante dated December 18, 1963- Respondent Comejo should attach to his answer whatever evidence he may have in support of his side, and should indicate in said answer whether he wishes to be heard in a formal investigation, should one be deemed necessary, or elects to stand on his written explanation.

"Return hereof within ten [10] days from receipt through the City Fiscal who was requested to give his comment thereon, will be appreciated."

Annex "2" is the second endorsement, dated January 14, 1964, of City Fiscal Gregorio G. Pineda, referring to petitioner "for immediate action the instant basic communication within the period so stated thereon." This was received by petitioner on January 15, 1964. Annex "3" is a letter dated January 17, 1964, of the Secretary of Justice addressed to petitioner, signed by Chief Prosecuting Attorney Gancayco, and received by petitioner on January 30, 1964, which reads in part:

"This is in connection with our 1st endorsement dated December 23, 1963, a copy of which is attached hereto for ready reference, requesting you to submit your answer to the charge contained in the verified complaint of Teofilo L. Amante dated December 13, 1963, within 10 days from your receipt.

"In view thereof, you are hereby given another five [5] days from receipt hereof, to file your answer, and for [sic] failure to do so, we will be constrained to take action on the basis of the complaint and the evidence already submitted."

The record does not show that petitioner ever filed an answer to the complaint, much less elected a formal investigation pursuant to Section 32 of Republic Act No. 2260, in spite of the unequivocal language of the first and third indorsements quoted above. Petitioner himself does not claim that he did, Respondents' assertion that there was no such answer and/or election, therefore, stands uncontradicted. Consequently, the investigation could well proceed without notice to petitioner before each hearing and the Constitutional injunction on due process was not disregarded.

"x x x (I)n the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard. xxx.': [Bermejov. Barrios, L-23614; Camorin v. Barrios, L-23615, February 27, 1970, 31 SCRA 764, 775-776-]

"x x x Absence of previous notice is not of itself a substantial defect; what the law abhors is the lack of opportunity to be heard, x x x." [ Manuel v. Villalena, et al. L-28218, February 27, 1971, 37 SCRA 745, 751.].

Such an opportunity was afforded the petitioner but by his negligence or sheer indifference he forfeited it. In the language of the Bermejo case, supra, "he has no one to blame but himself."

Assuming that it was the duty of Investigator Laya to notify petitioner of the hearings, there is in respondents'

favor, the presumption that "official duty has been regularly performed" [Rule 131, Section 5(m)]. That presumption has not been overcome; instead it has been strengthened by the fact admitted by petitioner that he was present at one of the hearings, i.e., on July 14, 1964. Petitioner describes his presence at that hearing as accidental, but this pretense is belied not only by the contrary assertion of respondents but also by petitioner's own explanation of the incident. The explanation is contained in the motion for reconsideration filed by petitioner on September 17, 1966, with the Civil Service Commission, pertinent portion of which reads;

"It is only by accident that he came to know it. Herein Respondent arrived early and waited for one and a half-hours for Investigator Laya to arrive. As Investigator Laya did not arrive during that one and a half hours, herein Respondent left word to Investigator Laya's secretary that he would go to Pasay City to postpone his cases scheduled for investigation in his office and that he would be back. As always, Investigator Laya once again proceeded with the investigation in the absence of herein Respondent who arrived while said investigation was already in progress only to be told to sign a certificate which said Investigator Laya dictated to his Secretary . x x x ."

The circumstances narrated by petitioner above, namely, that he went to Investigator Laya's office on the date of the hearing, waited for Laya for one and one-half hours, then departed after leaving word that he would come back, and he actually returned, warrant no other conclusion than that petitioner was at the office of Investigator Laya for the purpose of attending the hearing of which he had been previously notified.

### III.

Petitioner seeks to compel the respondent Secretary of Justice as the appointing power, and the Mayor and the Council of Pasay City as well as the City Fiscal thereof to reinstate him in office and pay his back salaries. To reinstate petitioner would necessarily call for the ouster of respondent Adeline Sanchez. Consequently, this is a petition for quo warranto under Rule 66, Section 6 of the Rules of Court, as petitioner alleges that he is entitled to a public office which is allegedly usurped or unlawfully held and exercised by another. The action to recover the office of Special Counsel or Fourth Assistant Fiscal of Pasay City should have been commenced within one (1) year after the ouster of the petitioner from the office and his failure to do so is fatal to his pretension [Section 16, Rule 66, *Tumulak v. Egay*, 82 Phil. 828, *Abeto v. Rodas*, 82 Phil. 59]

Respondent Adelino A. Sanchez was appointed by the Secretary of Justice, through Undersecretary of Justice Claudio Teehankee, to the position in question on July 1, 1966. On September 17, 1966, petitioner filed his motion for reconsideration of the decision of the Commissioner of Civil Service dated May 19, 1966, considering him resigned from the service. The Commissioner of Civil Service set aside his decision on March 7, 1969, and ordered a reinvestigation of the case. Petitioner sought his reinstatement pending reinvestigation and the investigator recommended favorable action thereon on February 24, 1970. However, the Secretary of Justice refused to reinstate him on the ground that his motion for reconsideration was filed when the decision of the Commissioner of Civil Service had become final and petitioner is "deemed to have abandoned his office by his failure to seasonably take the appropriate remedy to secure his reinstatement, first, when his Motion for Reconsideration (assuming that it was really filed on time) was not acted upon for years and, second, when the Commissioner set aside his May 19, 1966 decision."

As this action was filed on November 23, 1970, it is clear that petitioner had lost his right to recover the office involved, which he should have done within one year from March 7, 1969, when the decision separating him from office was set aside by the Commissioner of Civil Service who thereby ordered his reinstatement without prejudice to the outcome of the reinvestigation. The pendency of the administrative remedies that petitioner sought to exhaust did not operate to suspend the running of the one-year period within which a petition to recover the office should be filed (*Torres v. Quintos*, G. R. No. L-3304, April 5, 1951, 88 Phil. 436). Accordingly,

petitioner has lost his right to recover the office in question (*Abeto v. Rodas*, *supra*; *Unabia v. City Mayor of Cebu, et al.*, 99 Phil. 253, 258).

When this case was first deliberated on and submitted to a vote, five (5) members of the Court, namely, Associate Justices Fred Ruiz Castro, Enrique M. Fernando, Salvador V. Esguerra, Cecilia Munoz Palma and Ramon C. Aquino, voted to dismiss the petition, with Justice Esguerra writing the opinion and the four others concurring therein, and Justice Fernando specifically concurring only in part III thereof. Associate Justice Estanislao Fernandez dissented in a separate opinion, concurred in by Justice Zaldivar, and voted to grant the same. Associate Justices Claudio Teehankee, Antonio P. Barredo, Felix V. Makasiar and Felix Antonio did not take part. The Chief Justice did not cast his vote. Consequently, there is no majority of eight justices to either grant or dismiss the petition.

Pursuant to Section 11, Rule 56 of the Rules of Court, the case was set for rehearing, which was held on May 14, 1974. The petitioner personally appeared and argued in his own behalf, while Solicitor Felix de Guzman, in representation of the Solicitor General, appeared and argued for the respondents. After the rehearing the petitioner was granted by the Court a period often (10) days within which to file his memorandum in amplification of his oral argument and to submit such additional documents as he might deem pertinent to support his case. The Solicitor General was granted a like period from receipt of petitioner's memorandum within which to answer. Petitioner's memorandum and additional evidence, as well as the Solicitor General's memorandum, having been both submitted, the case was, for the second time, submitted to a vote.

The second voting stood as before, except that the Chief Justice voted with Associate Justices Calixto Zaldivar and Estanislao A. Fernandez to grant the petition.

Considering that five (5) Justices are for dismissal of the petition, three (3) are for granting the same, and four (4) did not take part, and consequently, a majority of eight (8) votes required to grant the petition being lacking, the petition is hereby dismissed in accordance with Section 11, Rule 56 of the Rules of Court.

Ruiz Castro, Munoz Palma, and Aquino, JJ., concur.

Fernando, J., concurs specifically on the basis of part III of the opinion.

Fernandez, J., dissents in a separate opinion.

Makalintal, C.J., and Zaldivar, J., concur in the opinion of Justice Fernandez.

Teehankee, Barredo, Makasiar, and Antonio, JJ., took no part.

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## DISSENTING

### FERNANDEZ, J.,

I dissent. Although the petitioner, as Special Counsel of Pasay City was considered resigned from the service in the decision of the Civil Service Commissioner on May 19, 1966, the fact remains that said Commissioner, upon motion of the petitioner, reconsidered his aforesaid decision in a Resolution dated March 7, 1969, and ordered a reinvestigation. In the reinvestigation conducted, the investigator of the Department of Justice, in a Report dated March 11, 1970, recommended dismissal of the case against the petitioner for "insufficiency of evidence," and his exoneration. And the Commissioner of Civil Service, in a Second Indorsement dated April 22, 1970, granted the petitioner's request for reinstatement. In the meantime, a voucher for P1,500.00 corresponding to the back salaries of the petitioner for three months from April 1 to June 30, 1966 was approved by the City Treasurer, the City Auditor, and the City Fiscal, of Pasay City, by virtue of which the petitioner received the said amount on June 10, 1970.

These facts clearly show the innocence of the petitioner. They have not been challenged before Us. Should this exoneration of the petitioner be now ignored by Us in view of the technicalities involved?

In the first place, the replacement in the meantime of the petitioner by Adelino A. Sanchez, has been made subject, in effect, to the final result of the case against the herein petitioner. If ordered reinstated, Mr. Sanchez should vacate the position.

And in the second place, the doubt on whether or not the petitioner received the first decision of the Commissioner of Civil Service of May 19, 1966 considering him resigned from the service, on August 18, 1966 as contended by him, or June 8, 1966 as contended by the respondents, should be resolved in favor of the herein petitioner; and as a consequence, his motion for reconsideration filed on September 17, 1966 should be considered as having been filed within the thirty-day period provided for in Section 36 of Republic Act 2260 (Civil Service Act of 1959). Petitioner's claim that he received a copy of the decision only on August 18, 1966 is corroborated by his signature in the records of the case showing that he received a copy of the decision only on said date, and by the Sixth Indorsement of January 14, 1971 to the Secretary of Justice of the Civil Service Commissioner stating that petitioner received the notice of the decision only on August 18, 1966.

In view of these conclusions that I have arrived at, it becomes unnecessary for me to discuss further the question of whether or not petitioner was accorded due process of law in the original investigation of the administrative complaint filed against him.

WHEREFORE, I believe the petition in this case for the reinstatement of the herein petitioner to the position as Special Counsel of Pasay City should have been granted.

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