

AMADO BELLA JARO, PETITIONER AND APPELLEE VS. THE HON. ELPIDIO VALENCIA, ETC., ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-18352. August 30, 1963*

Ponente: BAUTISTA ANGELO, J.

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On August 29, 1960, Dr. Amado Bella Jaro filed a special civil action of mandamus against the Secretary of Health, et al. to compel the latter to return him to his station at Cateel, Davao as municipal health officer thereof and to declare null and void Special Order No. 2 dated February 17, 1959 issued by the Director of Health Services temporarily assigning him as Rural Health Physician of the Municipality of Padada, Davao.

Dr. Jaro was at the time of the questioned order the municipal health officer assigned at Cateel, Davao by virtue of his appointment as physician in the Municipal Maternity and Charity Clinics, Bureau of Health, dated

December 13, 1949. Previous to said appointment he was appointed temporary physician in the Municipal Maternity and Charity Clinics of Batulaki, Davao, when on February 13, 1948 he was relieved of his assignment and transferred to Saug, Davao. On April 12, 1948, he requested to be assigned to Cateel, Davao, which was granted in an special order issued on April 14, 1948.

On November 25, 1949, he wrote the Director of the Bureau of Hospitals informing the latter that he had passed the School Physician Examination and so the status of his appointment should be changed from temporary to permanent. This was accordingly made on December 13, 1949 when he was extended a new appointment as physician in the Municipal Maternity and Charity Clinics, Bureau of Hospitals, pursuant to the provisions of Section 2, Commonwealth Act 704, as amended by Section 1, Republic Act 185. In this appointment there appears a notation which reads: "Change of status from temporary to permanent by virtue of your C.S. eligibility in the School Physician Examination; adjustment of salary from P200-per month by including the usual additional compensation not exceeding P100-per month; and to legalize your transfer from Batulaki, Davao to Cateel, same province, * * *."

As early as 1954, however, the relationship between Dr. Jaro and the Mayor of Cateel, Santiago Silverio, proved not to be cordial or happy so much so that on February 3, 1954, at the instigation of said mayor, certain charges of immorality were preferred against him and wherein he was found guilty of one count by the Commissioner of Civil Service who issued an order imposing a suspension of two months on him plus his transfer to another municipality. This order was however later modified in the sense that the penalty of transfer would no longer be mandatory but discretionary on the part of the Department Head who may effect the transfer if he believes it to be in the interest of the service. Dr. Jaro served the penalty of suspension for two months without pay from January 1, 1957 to February, 1957.

The relationship between the mayor and Dr. Jaro deteriorated. On July 5, 1956, Dr. Jaro filed a complaint for libel against Mayor Silverio and two others before the City Fiscal of Manila which was dismissed for insufficiency of evidence. On July 9, 1956, another complaint for falsification of public document was filed by Dr. Jaro against

Mayor Silverio and two others before the Provincial Fiscal of Davao, but said complaint was also dropped. And in the Court of First Instance of Manila Dr. Jaro filed a civil complaint for damages against the same mayor and two others which was also dismissed for failure of the plaintiff to come forward with his evidence.

Gavino R. Sepulveda, Congressman for Davao, wrote the Director of Health on March 4, 1958 inviting attention to the strained relation existing between Mayor Silverio and Dr. Jaro which he considered inimical to the interest of the people and derogatory to the efficiency of public service for which reason he requested the transfer; of Dr. Jaro to another place. Representations were likewise made with the President of the Philippines with the same aim who on August 18, 1958 issued a directive to the Secretary of Health inviting attention to such strained relation between the Mayor of Cateel and Dr. Jaro and ordering the transfer of the latter to another station.

On December 26, 1958, acceding to the directive of the President, Special Order No. 12 was issued by the Director of Health Services ordering the transfer of Dr. Jaro from his present station as Rural Health Physician of Cateel, Davao, to the Municipality of Padada, same province, which shall henceforth be his official station, of which order Dr. Jaro sought a reconsideration in a letter dated January 10, 1959. On February 17, 1959, Special Order No. 2 was issued by the same official amending the aforesaid Special Order No. 12 by virtue of which Dr. Jaro was given a temporary assignment in the interest of the public service as Rural Health Officer of the Municipality of Padada, Davao. Again, Dr. Jaro protested his new temporary assignment but the protest was denied by the Secretary of Health in a letter dated March 10, 1959 wherein he gave the reasons for extending Jaro's temporary assignment to Padada.

Dr. Jaro refused to comply with Special Order No. 2. Instead of proceeding to Padada he remained in Manila until November 3, 1959 when, forced by the stoppage of his salary, he returned to Cateel, Davao, his former station.

After a careful study of the evidence submitted by both parties, the court a quo rendered judgment declaring Special Order No. 2 dated February 17, 1959 null and void, while ordering the payment to petitioner of his back salaries as Municipal Health Officer of Cateel, Davao from August 1, 1959 and his transportation expenses and per diems in coming to Manila from Cateel, Davao, subject to auditing requirements. The counterclaim set up by respondents was dismissed for lack of merit.

Respondents interposed the present appeal.

In holding that appellee cannot be transferred from Cateel, Davao to Padada without cause or without his consent, and for which reason it declared Special Order No. 2 dated February 17, 1959 null and void, the court a quo laid stress upon the fact that the appointment extended to appellee as rural health physician was not a mere designation or assignment but an appointment to a fixed station, that is, Cateel, Davao, and so it held the view that appellee cannot be compelled to accept an appointment as rural health physician of Padada, Davao without cause or against his consent without violating the guarantee of tenure of office that the Constitution secures to those who are in the civil service because such transfer or new appointment would amount to his removal contrary to the provisions of the Constitution.

Appellants now contend that this finding is erroneous for the very appointment extended to appellee shows on its face that he has not been appointed as rural health physician of Cateel, Davao but rather as physician in the Municipal Maternity and Charity Clinics of the Bureau of Hospitals, while the notation appearing at the bottom of his appointment which refers to the legalization of his transfer to Cateel is but a mere clarification of his assignment which does not form an essential part of the appointment. It is simply an acknowledgment of the change of status from temporary to permanent as physician in the main office in view of the success of appellee in passing the School Physician Examination.

After a careful examination of the appointments concerned, we are inclined to uphold the view taken by appellants for no matter how minutely we glance over them we would not find therein anything that may in any manner indicate that appellee has been extended a permanent appointment as rural health physician of Cateel, Davao. This can be better seen from a view in retrospect of the evidence.

It should be recalled that prior to the issuance of the questioned order dated February 17, 1959, appellee was extended an appointment as "Temporary Physician of the Maternity and Charity Clinic of Batulaki, Davao" on September 7, 1946. On February 13, 1948, he was relieved of said assignment and transferred to Saug, Davao. And by special request of appellee himself, on April 14, 1948 he was ordered to proceed to Cateel, Davao to discharge his duties thereat as physician of the Municipal Maternity and Charity Clinic. It was while in this assignment that appellee wrote the Director of the Bureau of Hospitals informing him that he passed the School Physician Examination wherefore he requested that the status of his appointment be changed from temporary to permanent. And acceding to his request, appellee was accordingly extended an appointment of this tenor: "Pursuant to the provisions of Section 2, Commonwealth Act No. 704, as amended by Section 1, Republic Act No. 185, you are hereby appointed Physician in the Municipal Maternity and Charity Clinics, Bureau of Hospitals, with compensation at the rate of Three Thousand Six Hundred Pesos (P3,600) per annum, subject to the rules and regulations of the Bureau of Hospitals, regarding municipal maternity and charity clinics, the appointment to take effect September 25, 1948, as an exceptional case under Sec. 256, Rev. Adm. Code."

It may, therefore, be noted that the first appointment given to appellee was merely that of temporary physician of the Municipal Maternity and Charity Clinic of Batulaki, Davao, but from this assignment he was later transferred to Saug, Davao and then to Cateel, Davao. His transfers to these two stations were merely by assignment, not by appointment, the only real appointment given to him being that of physician in the Municipal Maternity and Charity Clinics, Bureau of Hospitals, which changed the status of his appointment from temporary to permanent. This is the only meaning of the notice appearing at the foot of the appointment which says: "Change of status from temporary to permanent by virtue of your C.S. eligibility in the School Physician Examination." The phrase that immediately follows to the effect that the change is also "to legalize your transfer from Batulaki, Davao to Cateel, same province" merely has the effect of legalizing appellee's transfer from Batulaki to Cateel, but does not convert it into a permanent appointment as rural health physician to Cateel, Davao, as found by the court a quo.

Even the law pursuant to which appellee's appointment was made does not contemplate the creation of any specific position of physician in the municipal maternity and 'charity clinic of any particular municipality. In fact, Section 2 of Commonwealth Act No. 704, entitled "An Act to Establish Municipal Maternity and Charity Clinics", merely provides for the appointment of a duly licensed physician "to take charge" of any particular municipal maternity and charity clinic. Section 3 of Republic Act No. 1082, approved on June 15, 1954, amending the aforecited Commonwealth Act No. 704, clearly shows that municipal maternity and charity clinics physicians are not intended to be appointed to any fixed or permanent stations, as may be seen from the following provision:

"Sec. 3. The existing Presidents of Sanitary Divisions, Municipal Maternity and Charity Clinics' physicians and Heads of the Units of the Rural Health Units (FOA/PHILCUSA) of the Bureau of Health shall be the Municipal Health Officers to head the rural health units and shall remain in their present stations as municipal health officers thereat until their places of assignment are fixed by the Secretary of Health upon the recommendation of the Director of Health: (Italics supplied)

Considering the terms of appellee's appointment, the doctrine enunciated by this Court in the case of *Miclat vs. Ganaden*¹ is applicable. We quote herein the pertinent portion:

"The case before us, however, does not involve any appointment to any particular station. It merely concerns

an assignment to a station made in the interest of the service. Thus, it appears that the appointment extended to petitioner is that of Welfare Officer Incharge, Division of Urban, Rural and Community Administration, the appointment having been extended by the President, upon the recommendation of the Social Welfare Administrator. Likewise, respondent Elvira Ganaden has also been extended an appointment to a similar office, also by the President, upon the recommendation of the same official. They both, therefore, bear appointments as welfare officers attached to the central office without any definite stations. As such, considering the nature of their appointments, both may be assigned to any place or station where their services may be needed, and wherever they are assigned they retain their positions as Welfare Officer of the Social Welfare Administration. And this power and discretion the Social Welfare Administrator may exercise under Section 79 (d) of the Revised Administrative Code which partly provides: "The Department Head also may, from time to time, in the interest of the service, change the distribution among the several Bureaus and offices of his Department of the employees or subordinates authorized by law." (Italic supplied)

Appellee's appointment not being to any specific station but as a physician in the Municipal Maternity and Charity Clinics, Bureau of Hospitals, he may be transferred or assigned to any station where in the opinion of the Secretary of Health his services may be utilized more effectively. In the case under consideration, the transfer of appellee from Cateel, Davao to Padada, same province, appears to be justified judging from the reasons given by the Secretary of Health in his reply to the petition for reconsideration of appellee dated February 27, 1958, from which we quote:

"Upon assumption to my present position as Secretary of Health, it has always been my established policy to safeguard public interest above personal interest and to resolve all problems in favor of the masses. In the present case of your client, it is very apparent that there exists a very strained relationship between Dr. Bella Jaro on one hand, and the Municipal Council and other prominent persons of Cateel, Davao, on the other. As a consequence, there would be no expected cooperation in that locality between the municipal officials and rural health physician. The ill-feelings and extraordinary poor public relations existing between your client and these officials will certainly bring about unpleasant and inefficient service to the people, especially to the poor. Moreover, it will hamper the efficiency of the Rural Health Unit in Cateel, Davao, to the prejudice of the people."

Regarding the claim of appellants that the court a quo erred in not entertaining their counterclaim, we find the ruling of said court justified for it appears that while it is true that appellee, instead of proceeding to Padada, Davao, as required by Special Order No. 2 in question, went to Manila and stayed in the Manila office practically without undertaking any particular work and only returned to his former station in Cateel, Davao when the payment of his salary was suspended and when he found it financially difficult to further stay in Manila, we don't find it proper for him to return what he had received by way of compensation during the nine months he stayed in Manila for he was never under suspension nor on leave even if, as he contends, he was reporting regularly at the Manila office. Anyway, the evidence is not clear that during the period he stayed in Manila appellee was not performing any official work, or was under suspension, and any doubt in this respect should be resolved in his favor.

Wherefore, the decision appealed from is reversed except with regard to the portion which dismisses appellants' counterclaim which is hereby affirmed. The second amended petition is dismissed, with costs against appellee.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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