

MIGUEL MENDIOLA, ET AL., PLAINTIFFS-APPELLANTS, VS. RICARDO TANCINCO, AS DISTRICT ENGINEER OF SAMAR, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-26950. July 13, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal from the decision dated May 31, 1966 of the Samar Court of First Instance dismissing plaintiffs' complaint.

The factual background is recounted by the trial court.

On August 16, 1954, a complaint was filed by 126 plaintiffs for mandamus against defendant Ricardo Tancinco, District Engineer of Samar, docketed as Civil Case No. 4398. After said mandamus suit was dismissed on January 8, 1955 without prejudice, the same 126 plaintiffs plus 62 others filed on March 29, 1955 another complaint for quo warranto with mandamus against the same defendant and the provincial governor, members of the provincial board, the Director of Public Works and Fortunato Abella, docketed as Civil Case No. 4441, subject of this appeal.

On July 2, 1955, upon motion of the defendants, the trial court dismissed the case on the ground of prescription, for the court a quo did not consider Civil Case No. 4441 as a continuation of Civil Case No. 4398. The Supreme Court reversed the trial court, considered Civil Case No. 4441 as a continuation of Civil Case No. 4398 and ruled that the one-year period from January 15, 1954 for the filing of the action had not yet elapsed when the present case was instituted on March 29, 1955 because the period was interrupted on August 16, 1954 by the filing of the first action (Civil Case No. 4398) and commenced to run again upon dismissal of the case on January 8, 1955.[1]

Consequently, the case was remanded to the court a quo for further proceedings.

On April 26, 1961, an amended complaint was filed by the plaintiffs, who were increased to 427.

On October 21, 1961, the trial court dismissed the amended complaint insofar as the newly impleaded plaintiffs are concerned (other than the original 154 plaintiffs in Civil Case No. 4398), on the ground of prescription, as well as insofar as plaintiffs Claro Adesas, Valeriano Mabulac, Valentin Babael, Angel Villanueva, Luis Enreras, Ambrosio Caballero, Leon Pamaso, Nicolas Guarino and Agapito Balandó, who were already dead, are concerned on the ground that an action for quo warranto is a claim for a right to an office which is personal and which cannot be transmitted to another or to one's heir.

Despite the above order, another amended complaint was filed with an even greater number of plaintiffs. On March 27, 1962, the trial court granted the motion of plaintiffs' counsel to again amend within thirty (30) days the complaint in order to re-arrange the names of the plaintiffs in relation to the corresponding defendants. But instead of re-arranging the names of the plaintiffs, counsel filed his second amended complaint in which he increased the number of the plaintiffs to 496, "or an addition of sixty-nine (69) to the former which was held to be

unauthorized."

After the defendants filed their answers, the trial court upon motion of the parties issued an order on July 19, 1963, constituting a commission composed of the Provincial Treasurer, Provincial Auditor and the District Engineer of the Second Engineering District or their authorized representatives, to verify the records of their respective offices regarding the following data of the original 154 plaintiffs:

"1. Employment on January 15, 1954 from and to;

"2. Status of employment as of January 15, 1954 whether (a) Regular and permanent, (b) Temporary, (c) Emergency, or (d) Casual;

"3. If civil service eligible or not on January 15, 1954, if civil service eligible, what civil service eligibility and when obtained;

"4. If reinstated or not and if reinstated when;

"5. Whether holder of Backpay Certificate or not, if holder the acknowledgment number;

"6. Whether retired under Rep. Act No. 660, as amended or not, if retired when;

"7. Whether already dead, if so date of death; and

"8. Whether they have enjoyed vacation and sick leaves."

Pursuant to the order of the trial court dated August 25, 1965, directing the plaintiffs to file another amended complaint which will eliminate the names of the newly impleaded plaintiffs in the second amended complaint filed on April 18, 1962 and to include as plaintiffs only those persons listed as plaintiffs in Civil Case No. 4398, the plaintiffs filed on September 28, 1965 the third amended complaint including only 153 plaintiffs (mentioned on pp. VIII-X of the trial court's Decision), alleging that these plaintiffs were employed from 5 to 38 years in the Bureau of Public Works in Samar until their dismissal on January 15, 1954, with civil service eligibility, holders of backpay certificates and enjoying vacation and sick leaves, and including as defendants the Commissioner of Public Highways, the Auditor General and the National Treasurer.

The defendants reproduced their previous answers to the second amended complaint which aver, among others, that plaintiffs Miguel Mendiola, Guillermo Amancio and Gorgonio or Gregorio Bacatan (p. 25, t.s.n.) had already retired under Republic Act No. 660, as amended, are now receiving pensions from the GSIS and hence can no longer be reinstated; and that the other plaintiffs were separated from the service in accordance with the reorganization plan for the province of Samar duly approved by the Bureau of Public Works and Communications.

The court a quo dismissed the amended complaint insofar as plaintiffs (six) Victoriano Viñas (or Bienvenido Venias), Antonio Bendo, Anacleto Labraque, Sotero Beguir (Begun), Vicente Delector and Zosimo Noning (Nuñez), were concerned; because their names do not appear in the reports of the commissioners (Exhibits C & C-1) and in plaintiffs' own Exhibits D and D-1 to D-25.

The trial court then proceeded to consider the evidence insofar as the remaining 147,139 of whom appear in the list of the reports of the commissioners (Exhs. C & C-1) and the remaining 8 with service records, all showing that plaintiffs were merely temporary employees (Exhs. D, D-2, D-4, D-8, D-10, D-18, D-23 and D-25).

Plaintiffs-appellants, thru counsel, admitted the correctness of the said reports, Exhibits C and C-1, of the commissioners in their entirety, for they are official (pp. 4-5, t.s.n., hearing of Dec. 10, 1965). The defendants-appellees likewise admitted their correctness except the approximate amount due the plaintiffs-appellants (p. 5, t.s.n., hearing of Dec. 10, 1965).

The trial court found that, as per Exhibits C, C-1 and D and its series, the 147 plaintiffs had rendered service either as foremen or camineros before they were separated from the service on January 15, 1954; and that sometime after, they were re-instated, except 18 others, until their service were terminated pursuant to the memorandum-order dated April 2, 1954 of the Director of Public Works (Exhibit 3) to effect the implementation of the reorganization plan (Exhibit 1), which required the lay-off of some employees whose services were rendered unnecessary by the use of mechanized units.

The defendants maintained that the separation of the plaintiffs from the service was not arbitrary, because they were merely temporary employees. Defendant Ricardo Tancinco affirmed that only temporary or emergency employees were separated from the service, while those with permanent appointments duly approved by the Civil Service Commission were retained (pp. 29, 33, t.s.n.). This posture sustained by Exhibits C, C-1 and D and its series — all based on their service records — according to appellants' witness, Maximo Abejo, custodian of the service records of the District Engineer's Office showing that the status of the plaintiffs' appointment was temporary (pp. 16-18, 29, 33, t.s.n.). Being temporary, the appointment of plaintiffs then could be terminated anytime without cause,[1-A] even if they are civil service eligibles.[2]

Plaintiffs-appellants herein have not demonstrated that they are civil service eligibles and that they were extended permanent appointment. Every appointee receives an original appointment duly attested by the Civil Service Commission either as permanent, provisional, temporary or emergency. The law in force at the time of removal shall apply.[3] Under Section 682 of the Revised Administrative Code, the law then applicable to plaintiffs-appellants who were dismissed in 1954, temporary employees can continue in office only for a period not exceeding three months but in no case beyond 30 days from receipt by the office concerned of the certification of eligibles from the Civil Service Commission.

WHEREFORE, THE APPEALED DECISION IS HEREBY AFFIRMED. NO COSTS.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Antonio, and Esguerra, JJ., concur.

Teehankee, J., concurs in the result.

[1] Mendiola, et al. vs. Tancinco, et al., L-14107, Aug. 31, 1960, 109 Phil. 317-327.

[1-A] Esquillo vs. Subido, L-30341, Aug. 22, 1969, 29 SCRA 30, 32; Barangan vs. Hemando, L-28652, Feb. 28, 1969, 27 SCRA 239; Santos vs. Chico, L-24155, Sept 30, 1968, 25 SCRA 343, 346; Jimenea vs. Ganzon, Jan. 22, 1968, 22 SCRA 226, 229; Montero, et al. vs. Castellanes, L-12694, 59 O.G. 1741; UP, et al. vs. CIR, et al.,

L-15416, April 28, 1960, 58 O.G. 1536; Quitquit, et al. vs. Villacorta, L-15048, April 29, 1960.

[2] Cuadra vs. Cordova, L-11602, April 21, 1958; Hojilla vs. Mariño, et al., L-20574, Feb. 26, 1965, 13 SCRA 293, 297; Quitquit vs. Villacorta, supra; Madrid vs. Auditor General, L-13523, May 31, 1960; Azuelo vs. Arnaldo, L-15144, May 26, 1960; Taboada vs. Mun. of Badian, L-14904, May 31, 1961.

[3] Tañada vs. Legaspi, L-22537, March 31, 1965, 13 SCRA 566, 572-573.

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