

EUFRONIO J. LLANTO, PETITIONER AND APPELLANT, VS. MOHAMAD ALI DIMAPORO, PROVINCIAL GOVERNOR OF LANA DEL NORTE; PROVINCIAL BOARD OF LANA DEL NORTE; VALERIO V. ROVIRA, VICE-GOVE...

G.R. No. L-21905. March 31, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Resolution No. 7, Series of 1960, adopted by the Provincial Board of Lanao del Norte on January 6, 1960, reverted the 1960-1961 salary appropriation for the position of Assistant Provincial Assessor to the general fund. In effect, that position then held by petitioner was abolished. Appeals to the Commissioner of Civil Service, the Secretary of Finance, the Secretary of Justice, the Auditor General and the President of the Philippines were of no avail. Petitioner came to court on mandamus. He sought (a) the annulment of the resolution aforesaid; (b) the restoration of the salary appropriation; (c) his reinstatement, and (d) payment of back salaries and damages.

Respondents moved to dismiss. Ground therefor is lack of cause of action. The Court below granted the motion, dismissed the petition. The motion to reconsider failed. Offshoot is this appeal.

- The threshold questions are these: Was the dismissal order issued "without any hearing on the motion to dismiss"? Is it void?

We go to the record. The motion to dismiss was filed on February 1, 1961 and set for hearing on February 10 following. On February 8, 1961 petitioner's counsel telegraphed the court, "Request postponement motion dismissal till written opposition filed." He did not appear at the scheduled hearing. But on March 4, 1961 he followed up his wire, with his written opposition to the motion to dismiss. Adverting to the 5-page motion to dismiss and the 6-page opposition thereto, we find that the arguments pro and con on the question of the board's power to abolish petitioner's position minutely discussed the problem and profusely cited authorities. The May 15, 1961, 8-page court order recited at length the said arguments and concluded that petitioner made no case.

One good reason for the statutory requirement of hearing on a motion is to enable the suitors to adduce evidence in support of their opposing claims.[1] But here the motion to dismiss is grounded on lack of cause of action. Existence of a cause of action or lack of it is determined by a reference to the facts averred in the challenged pleading. The question raised in the motion is purely one of law. This legal issue was fully discussed in said motion and the opposition thereto. In this posture, oral arguments on the motion are reduced to an unnecessary ceremony and should be overlooked.[2] And, correctly so, because the other intendment of the law in requiring hearing on a motion, i. e., "to avoid surprises upon the opposite party and to give to the latter time to study and meet the arguments of the motion",[3] has been sufficiently met. And then, courts do not exalt form over substance.

Besides, there is respondents' vehement claim that the motion to dismiss (originally set for February 10) has been

actually reset for hearing for March 23, 1961, at 8:30 o'clock a.m.; that then there was no appearance on petitioner's behalf, but that respondents' attorneys appeared. Of course, petitioner now disputes this fact. But nothing extant in the record would support his position. On the contrary, his telegram of February 8 induces rational belief that all he wanted was to be given an opportunity to meet argument with argument by means of his "written opposition". He filed that opposition. And more. Adversely affected by the court's order, he sought reconsideration thereof. In that motion to reconsider he squarely brought to the court's attention his present averment that "no hearing was conducted on the motion to dismiss". The gravity of this charge notwithstanding, the same Judge shunted aside petitioner's contention with the statement that his motion is "not (being) meritorious". Implicit in this pronouncement is that there was such a second hearing and petitioner was there given an opportunity to argue his case. It is in this backdrop that we hew to the line drawn in the Ongsiako decision[4] that "it is presumed that the proceeding was regular and that all the steps required by law to be taken before the court could validly act thereon, had been so taken". The quantum of proof required to overcome this presumption is reflected in a passage in another case,[5] thus: "in the absence of a clear showing to the contrary, the regularity of the court proceedings" is to be upheld. Petitioner offered no showing, let alone a clear showing, of irregularity.

More to this. Even conceding for present purposes that there was no previous notice of hearing of the motion to dismiss before the court ruled (May 15, 1961) on the same adversely to petition, still this alleged defect was fully cured by his motion for reconsideration aforesaid (filed June 24, 1961), which was overruled. By the standard in *De Borja, et al., vs. Tan, etc., et al.*, 93 Phil. 167, 171, "the interested parties were given their day in court, and the previous objection of lack of notice or opportunity to be heard fully met". As the *De Borja* decision points out, what the law prohibits "is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard".[6]

- The critical inquiry is whether or not the mandamus petition was correctly dismissed on the ground of lack of cause of action. The job of assistant provincial assessor is a creation of the provincial board. Petitioner concedes that, in the law of public administration, the power to create normally implies the power to abolish.[7] The thrust of his argument, however, is that the power to abolish is not absolute; it is subject to the limitations that it be exercised (a) in good faith, (b) not for personal or political reasons, and (c) not in violation of the Civil Service Law. He cites the *Briones* case[8]. There, the reasons given for the abolition of the positions of petitioners therein, namely, "economy and efficiency", were found to be transparent and unimpressive and to "constitute a mere subterfuge for the removal without cause of the said appellees, in violation of the security of Civil Service tenures as provided by the Constitution". And this, because in said case it was shown that the abolition of the 32 positions in the city mayor's office and the office of the municipal board was preceded by the creation of 35 positions in the city mayor's office, calling for an annual outlay of P68,100.00.

Here, the case has not gone beyond the pleadings stage; there is no trial on the merits. And, taking the averments of the petition herein as bases, the *Briones* decision is not properly to be read as controlling. For, the wholesale creation and abolition of offices in almost the same breath there, are not here obtaining. Differences in factual background generate differences in legal consideration.

Let us now take the petition on its face value. Paragraph VIII thereof avers that "with intent of circumventing the constitutional prohibition that no officer or employee in the civil service shall be removed or suspended except for cause as provided by law" respondents "maliciously and illegally for the purpose of political persecution and political vengeance, reverted the fund of the salary item * * *, and furthermore eliminated or abolished the said position effective July 1, 1960". This statement by itself submits no justiciable controversy for the court's determination; it is not an allegation of ultimate facts; it is a mere conclusion of law unsupported by factual

premise. Some such averments as that "defendant usurped the office of Senator of the Philippines",^[9] or that defendant had incurred damages as a consequence of the "malicious and unjustified" institution of the action,^[10] have heretofore been stricken down by this Court as nothing more than mere conclusions of law.^[11]

Finally, as against the allegation of malicious and illegal abolition of petitioner's position, we have the presumption of good faith^[12]. Not that this presumption stands alone. There is the other presumption that official duty had been regularly performed by the members of the provincial board^[13]. And the facts set forth in Resolution No. 7, lend stout support to these two precepts, viz: There was a huge deficit of P60,330.60; the position of assistant provincial assessor—which is not required to be created by the Administrative Code^[14]—could be dispensed with and performed by others^[15].

It results that petitioner's case is not within the coverage of the exceptions to the general rule that the provincial board's power to create normally carries with it the power to eliminate. And, petitioner has no cause for complaint.

- Petitioner also advances the theory that the provincial board resolution abolishing his position is not effective, because it did not bear the stamp of approval of the Secretary of Finance, citing Republic Act No. 1062. The necessity for such approval, however, was done away with by the passage of Republic Act No. 2264, otherwise known as the Local Autonomy Act. Section 3 (a) of the Local Autonomy Act gives the provincial board the power to appropriate money having in view the general welfare of the province and its inhabitants. Concomitant to this express power is the implied power to withdraw unexpended money already appropriated.

We observe that the sole authority given by the Autonomy Act to the Secretary of Finance is to review provincial and city budgets and city and municipal tax ordinances.^[16] Nothing therein contained requires his approval for the abolition of positions in the provincial or city or municipal governments. We do not even discern in the law a purpose to require such approval. For the language is restrictive.^[17] We are not prepared to take impermissible liberties with and recast said law. Such is not within the scope of the powers entrusted to courts of justice.

On top of all of these is the fact that section 12 of the Local Autonomy Act leaves us with but one guidepost in the interpretation of powers allocated to local governments, thus:

"Sec. 12. Rules for the interpretation of the Local Autonomy Act.—

1. Implied power of a province, a city or municipality shall be liberally construed in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist."

Autonomy is the underlying rationale of the Local Autonomy Act. By the statute itself no interpretation thereof should be indulged in which would cripple the board's powers. This legal yardstick stops us, too, from writing into the statute the Finance Secretary's approval as a condition precedent to effectivity of the resolution herein questioned.

- By section 3, Rule 65 of the Rules of Court, mandamus will issue if the performance of an act is one "which the law specifically enjoins as a duty resulting from an office, trust, or station". Mandamus compels performance of a ministerial duty. That duty must be clear and specific. But mandamus is not meant to control or review the normal exercise of judgment or discretion^[18]—which is the case here. The respondent board, therefore, cannot be compelled to restore petitioner's item in the budget.

The order appealed from is not legally infirm. We accordingly vote to affirm the same. Costs against appellant.

So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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- [1] Ruperto vs. Fernando, et al., 83 Phil. 943, 945; Zobel vs. Abreu, et al., 52 Off. Gaz. No. 7, pp. 3592, 3594.
- [2] Section 2, Rule 1, Rules of Court; Case et al., vs. Jugo, 77 Phil. 517, 522.
- [3] J. M. Tuazon & Co. vs. Magdangal, G.R. L-15539, January 30, 1962.
- [4] Ongsiako vs. Natividad, 79 Phil. 3, 6.
- [5] People vs. Natividad, 48 Off. Gaz. No. 4, pp. 1361, 1363; emphasis supplied.
- [6] See also: Embate vs. Penolio, 93 Phil. 782; Parina vs. Cobangbang, et al., G. R. L-8398, March 21, 1956.
- [7] Rodriguez, et al., vs. Montinola, et al., 94 Phil. 964, 974; Manalang vs. Quitoriano, et al., 50 Off. Gaz. No. 6, pp. 2515, 2518; Dominguez, et al., vs. Pascual, et al., 54 Off. Gaz. No. 4, pp. 972, 975; Castillo vs. Pajo, et al., 54 Off. Gaz. No. 27, pp. 6738, 6739.
- [8] Briones, et al., vs. Osmeña, etc., et al., 55 Off. Gaz. No. 11, pp. 1920, 1922.
- [9] Rodriguez vs. Tan, 91 Phil. 725, 726.
- [10] Worcester vs. Lorenzana, 56 Off. Gaz. No. 52, pp. 7932, 7934.
- [11] To the same effect: Braga vs. Millora, 3 Phil. 458, 464, Valmilero vs. Kong Chang Seng, 33 Phil. 84, 85, 87.
- [12] Art. 527, Civil Code of the Philippines.
- [13] Section 5(m), Rule 131, Rules of Court.
- [14] Article V, Administrative Code.
- [15] See Annex A of the Motion to Dismiss.
- [16] Sections 1 and 2, Republic Act No. 2264.
- [17] II Sutherland, Statutory Construction, 1943 ed., pp. 412-413; State vs. Grant Superior Court, et al., 172 N.E., 897, 901; Catuiza vs. People, G.R.L-20455, March 31, 1965; Nin Bay Mining Co. vs. Roxas Municipality, etc., G.R. L-20125, July 20, 1965.
- [18] III Moran, Comments on the Rules of Court, 1963 ed., pp. 172-173.

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