

**IRENEO V. BERNARDO, B. JOSE CASTILLO, AMABLE C. VICENCIO,
NOLI MA. CORTES AND AMADO B. DE LEON, PETITIONERS, VS. HON.
WENCESLAO PASCUAL, HON. AMADO GERVACIO AND HON.
VICENTE JAV...**

G. R. No. L-6534. June 16, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

Prior to June 18, 1952, the petitioners, assistant provincial fiscals of Rizal, were receiving annual salaries fixed under section 1674 of the Administrative Code as follows:

Ireneo V. Bernardo, first assistant fiscal P3,000; B. Jose Castillo, second assistant fiscal P2,800; Amable C. Vicencio, assistant fiscal P2,400; Noli Ma. Cortes, assistant fiscal P2,400 and Amado B. de Leon, assistant fiscal P2,400.

On that date Republic Act No. 732 took effect augmenting the compensation of all assistant provincial fiscals in the Islands, according to the class to which the respective provinces belonged. Under said Act petitioners are entitled to P4,500, P4,250, P3,600, P3,600 and P3,600 respectively per annum, inasmuch as Rizal is a First-Class-A province.

In pursuance of the above-mentioned statute, the provincial fiscal of Rizal submitted in due course to the herein respondents, as members of the Provincial Board, a plantilla for his office fixing the salaries of his assistants at the increased rates. However the respondents, as the Provincial Board in approving the budget for the fiscal year July, 1952 to June 30, 1953, assigned salaries to petitioners at the old rates, instead of the increased amounts prescribed by Republic Act No. 732.

Thereafter upon protest of petitioners, the Department of Finance called respondents' attention to the deficiency, suggesting at the same time the approval of a supplemental budget. And the provincial treasurer of Rizal, Mr. I. Susara, endorsing the stand of his chief, recommended that the additional amount of P9,029,85 "to cover up the deficiency in the current appropriation for salaries of the assistant fiscals" be appropriated. And he certified to the availability of funds for that particular expenditure.

Nevertheless the respondents failed or refused to pass the needed supplementary budget. Consequently this mandamus proceeding was instituted to compel the provincial board to provide for the requisite allotment.

Ordered to make answer, the respondents, acknowledging the "mandatory nature" of Republic Act 732, pleaded that its implementation depends upon the local finances, and that Rizal Province had "no sufficient available funds" from which to draw the additional compensation of its assistant prosecuting officers.

This defense the petitioners have shown to be actually without foundation. Firstly, they pointed to the indorsement of the provincial treasurer certifying to the availability of funds, quoted verbatim in the petition, which

indorsement the respondents have not directly denied. Secondly, they showed that according to the Provincial Supplemental Budget, No. 6 (Annex 1) there was available for appropriation by the Board on December 29, 1952, the sum of P67,806.87 out of which the amount of P9,029.85 could be set aside.

The respondents, informing this court that they "have been constrained to abolish" several positions in the provincial government, strongly argue that it will be unjust "to those employees who have been laid off" if the recreation of their positions is not given priority over any increase of salaries. This seems to be the principal reason for respondents' action or non-action. Indeed their counsel, during the oral argument, expressed the respondents' feeling that before granting the increases, they should first restore the abolished positions.

Evidently the respondents assume that they have discretion to grant or not to grant the salary increases, just as they have to abolish or re-create some positions in the provincial plantilla. Such assumption is, however, erroneous. They have no discretion to appropriate or not to appropriate the amount necessary to pay the increased salaries. They are duty bound to make the appropriation—enough money being ready for use in the provincial coffers. Moral obligations or other political considerations should not stand in the way of the fulfillment of duties imposed by legislation which provincial boards are not at liberty to ignore.

Respondents' final assertion that there are employees who have retired and must be paid, and that the sum of P25,000 must soon be delivered to the National Government for three irrigation pumps, constitutes no valid excuse. The amount of such retirement gratuity is not specified, probably because even if added to the P25,000-peso-debt, it would still leave sufficient balance from the P67,806.87 admittedly available as of December 29, 1952.

Petitioners made a clear case. Wherefore the respondents are hereby required to appropriate, without unnecessary delay, the sum above-indicated to satisfy the increased emoluments of said assistant fiscals. No costs.

Paras, C. J., Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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