

**DOMINGO ARAO, ACCOMPANIED BY HIS WIFE ILUMINADA ARAO,
PETITIONERS-APPELLANTS, VS. ANTONIO R. LUSPO, MAYOR OF
MAMBAJAO, CAMIGUIN SUBPROVINCE, MISAMIS ORIENTAL,
MUNICIPAL COUNCIL ...**

G.R. No. L-23982. July 21, 1967

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BENGZON, J.P., J.:

Resolutions Nos. 62 and/or 63 of the municipal council of Mambajao, Camiguin subprovince, Misamis Oriental, dated August 2, 1960, abolished the position of municipal clerk in the Mayor's office in said municipality, effective August 3, 1960, premising the same on reasons of economy. Domingo Arao, the occupant of said position since January 4, 1952, moved for reconsideration with said council. Said motion was however considered dropped when Arao failed to appear at a subsequent date fixed for him to be heard. Aside from this, Arao complained to the Civil Service Commissioner, alleging that the municipal council removed him from office in violation of his right under the Constitution to security of tenure as a civil service eligible holding a permanent appointment.

Without awaiting the ruling of the Commissioner of Civil Service, Arao filed on June 21, 1961 a petition for mandamus in the Court of First Instance of Misamis Oriental, against the municipal mayor, council and treasurer of Mambajao, to compel them to reinstate him in his position and to pay his salary from the time he was separated from the service. Pending the same, on July 3, 1961, the Commissioner of Civil Service, deciding Arao's complaint, ruled that the municipal council had the power to abolish the position in question for bona fide reasons of economy, subject to Department head approval. The Secretary of Finance, to whom the matter was then endorsed upon the theory that such abolitions for reasons of economy are made subject to his approval under Republic Acts 1062 and 1063, recognized said abolition as fully within the power of municipal council, in light of Republic Act 2260 providing for local autonomy.

On September 8, 1964, the Court of First Instance decided the petition for mandamus, dismissing it upon the finding that the position at issue was duly abolished in good faith for reasons of economy. Petitioner appealed directly to Us to raise questions purely of law.

Appellant contends that Resolution No. 62 abolishing his position was not duly passed in accordance with Section 2224 of the Revised Administrative Code:

"Sec. 2224....The affirmative vote of a majority of all the members of the municipal council shall be necessary to the passage of any ordinance or any proposition creating indebtedness; but other measures, except as otherwise specially provided, shall prevail upon the majority vote of the members present at any meeting duly called and held."

Appellant points out that Resolution No. 62 was voted upon as follows: Three in favor; two against; and three abstaining. And thus, he argues, the required majority of those present, five out of eight, was not obtained. The point however becomes academic in view of Resolution No. 63, passed the same day, providing for the municipal

budget, wherein two positions, one of which is that of messenger-clerk herein involved, are stated as "abolished" instead of being appropriated for with salaries. Said Resolution No. 63 was passed unanimously by all members of the council, except one who was absent. Suppression of items in the municipal budget resolution or ordinance amounts to abolition of the positions thus eliminated (*Alipio v. Rodriguez*, L-17336, December 26, 1963). As the Court of First Instance aptly observed:

"Subsequent to the consideration of Re-solution No. 62, on the same date, August 2, 1960, Resolution No. 63, approving the Budget wherein the position of petitioner was abolished, together with the position of field clerk, was unanimously approved by the members of the council, except one who was absent. And it is important to note that the approval of said resolution was upon motion of Councilor Ignacio Peñaloza who previously voted against Resolution No. 62, and seconded by Councilor Melecio L. Sagrado who abstained from voting on Said Resolution No. 62(Exh. 3, p. 111). Thus, thru Resolution No. 63, the will of the Municipal Council was expressed, clearly and unequivocally, in approving the Budget and in abolishing the two positions."

Appellant would claim that the reason why his position was abolished is not really to promote economy but to remove and unseat him without cause. Appellant stresses that the same budget Resolution No. 63 provided for salary increases in other items, totalling P4,872.00. And that there was still a reserve of P3,144.98 so that his salary of P1,145.00 a year could have easily been provided thereunder.

The finding of the trial court is that petitioner's office was abolished because its functions were superfluous, light and simple and could readily be absorbed by other existing offices; that in fact it was so undertaken by the municipal secretary; that no one was appointed in his place, nor was a new position created; that although the budget granted salary increases to different officials, the same was pursuant to Republic Act 2368 standardizing the salaries of municipal officials. As to the reserve of P3,144.98 the same appears reasonably necessary, as the record shows that it was intended to meet statutory obligations of Mambajao in connection with the creation of parts of its former territory as the new municipality of Mahinog, and for volcano eruption contingency.

Said findings are in the nature of facts regarding which the trial court's determination ought to be left undisturbed herein.

Appellant's clerical position, was within the power of the municipal council to create, and was also within its power to abolish, provided the exercise of said power is not used as a subterfuge to cover removal from office without cause of a civil service employee.* Abolition of the position in good faith is not a removal, so the Constitutional provision, Sec. 4, Art. XII, providing that removal of employees in the civil service be only for cause, does not apply. Such is the situation herein. Petitioner not only failed to prove that personal or political reasons were behind the abolition of his position; the fact that reasons of economy alone were what prompted the abolition, has been fully substantiated.

WHEREFORE, the decision appealed from, dismissing the petition for mandamus, is hereby affirmed. No costs.

SO ORDERED.

Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

* *Ulep v. Carbonell*, L-17807, January 31, 1962; *Castillo v. Pajo*, L-11262, April 28, 1958; *Manalang v. Quitoriano*, 94 Phil. 903.

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