

**ELISEO ALINSUGAY, PURITA VILLAFLOR, PAZ GANDIONGCO AND
CELSO REMO, PETITIONERS, VS. COURT OF APPEALS, RENE ESPINA,
OSMUNDO RAMA, PABLO GARCIA, REYNALDO MENDIOLA,
VALERIANO CARIL...**

G.R. No. L-48639. March 16, 1987

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Petitioners Eliseo Alinsugay, Purita Villaflor, Paz Gandiongco and Celso Remo were appointed laborers in various offices of the provincial government of Cebu. After the then governor, Rene Espina, had signed their appointments, the same were submitted to the local office of the Civil Service Commission for attestation. Thereafter, the Cebu provincial auditor advised the provincial treasurer that the appointments of the four petitioners and forty-four others whose positions belonged to the unclassified civil service, should be approved by the provincial board pursuant to Section 2081 of the Administrative Code, as amended by Republic Act No. 528, otherwise, their salaries would not be allowed in audit (Exh. 7).

The provincial treasurer then indorsed the provincial auditor's advice to the governor. He also sent a letter to the provincial board requesting "approval or disapproval" of the appointments of the forty-eight laborers (Exhs. RR & 8).

Said letter was one of the matters discussed in the provincial board's regular session. The minutes of that session reveal that the provincial vice-governor and the two present board members expressed the opinion that they were for the approval of the appointments while the governor stated that he wanted to "abstain" (Exhs. UU & VV).

Subsequently, the governor received a communication from the Civil Service Commission advising him that all appointments in the unclassified or non-competitive positions in the provincial service including that of the provincial board secretary, must be approved by the provincial board to be valid and effective. The governor was therefore constrained to submit the appointments to the provincial board (Tsn., September 28, 1972, p. 16). However, the action on the appointments was delayed because the provincial board did not meet as the governor was more concerned with the coming local elections (Tsn., *supra*, p. 21).

After the elections, the governor decided to submit the appointments of the forty-eight laborers to the new provincial board. Some of the appointments were approved but others, including those of the petitioners, were disapproved (Exhs. 10 to 13-A). Petitioners sought the governor's reconsideration of the provincial board's resolution but the same was denied. (Exh. 5).

Alinsugay and his co-petitioners herein then filed a petition for mandamus and damages against the governor, the vice-governor, the members of the provincial board, the provincial treasurer and the provincial auditor. They prayed that the respondents be ordered to "continue all petitioners in their employment", to include them in the provincial plantilla or any supplemental budget, and to appropriate the necessary funds to cover all the salaries

due them. They also prayed that the members of the provincial board be ordered to pay jointly and severally each of the petitioners P5,000 as moral damages and P2,000 as attorney's fees plus exemplary, actual and consequential damages (Record in Civil Case No. R-11016, pp. 4 & 5).

In its decision, the Court of First Instance of Cebu dismissed the petition for lack of merit. It ruled that, to be complete and valid, the appointments should have been made in accordance with Section 2081 of the Revised Administrative Code which provides that appointments in the unclassified civil service should be submitted to and approved by the provincial board. It also held that the approval of the provincial budget and plantilla by the provincial board did not mean the approval of the appointments; that the appointments were not completed through their attestation by the Civil Service Commission; that the provincial board's disapproval of their appointments was lawful; and that mere acquisition of a civil service eligibility by the petitioners did not make their status permanent (CFI Decision, pp. 44-49; Record, pp. 624-629).

Petitioners appealed to the Court of Appeals which affirmed the lower court's decision. Their motion for reconsideration having been denied, petitioners filed the instant petition for review on certiorari. They submit to this Court the issues of: (a) whether or not they could still be dismissed as laborers notwithstanding the approval of their appointments by the Civil Service Commission and their having collected salaries under audited payrolls, and (b) whether or not private respondents are liable for moral damages for the alleged illegal dismissal of the petitioners (Petition, pp. 4-5; Rollo, pp. 16-17).

We gave due course to the petition. Subsequently, the petitioners filed an urgent ex-parte motion praying for the consolidation of this case with G.R. No. L-47472, Valentino Taboy, et al. vs. Court of Appeals, et al., on the ground that "the facts involved, issues raised and laws applicable in the instant case are the same or similar" to those in G.R. No. L-47472 (Rollo, p. 113). The motion for consolidation was granted in the resolution of September 24, 1979 (Rollo, p. 121).

Notwithstanding that resolution, on July 24, 1981, a decision was promulgated in G.R. No. L-47472 (105 SCRA 758). In said case and in affirming the Court of Appeals' decision, this Court ruled that "it matters not that the appointments of the petitioners had been attested by the Commissioner of Civil Service and that they had served for several years because the appointments having been made without the approval of the Provincial Board of Cebu, they were not valid appointments" (idem, on page 761).

There is no compelling reason to depart from that ruling most especially because the aforecited case and this case arose from the same factual milieu. We should also add that the private respondents, who, as members of the Cebu provincial board, disapproved the petitioners' appointments, may not be held liable for such act. As correctly observed by the lower court, by force of logic, the power and authority conferred by law on a body to approve appointments, carries with it the corresponding power to disapprove. In the absence of proof of malice on the part of private respondents, they cannot be held liable for their official act.

We also share the view of the Court of Appeals that there is no reason to perpetuate or continue the mistake, if there was, in the payment of salaries of the petitioners (CA Decision, p. 12; Rollo, p. 46), considering that petitioners do not have a legal right over their positions.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed. No costs.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

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