

**DEOGRACIAS REMO AND MUNICIPALITY OF GOA, CAMARINES SUR,
PETITIONERS, VS. HON. PERFECTO R. PALACIO, JUDGE, COURT OF
FIRST INSTANCE OF CAMARINES SUR, AND ANGEL ENCISO,
RESPONDENTS.**

G.R. No. L-13718. April 28, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The petition herein, filed by Deogracias Remo and the Municipality of Goa, Camarines Sur, purports to be one for a writ of certiorari against respondent, Hon. Perfecto R. Palacio, as Judge of the Court of First Instance of Camarines Sur. Actually, however, petitioners seek a writ of mandamus to compel said respondent Judge to give due course to an appeal taken by the former from a decision of the latter in favor of the other respondent herein, Angel Enciso, as petitioner in Special Civil. Case No. 2650 of the aforementioned court.

That case was instituted on May 11, 1954 for the purpose of enjoining Remo, as the then Mayor of Goa, Camarines Sur, to reinstate Enciso, as a sergeant of the police force of said municipality, and of recovering P3,000 as moral damages, and P1,200 as actual damages, as well as attorney's fees and the costs. On October 6, 1954, Enciso filed an amended petition with a prayer that Remo be likewise, sentenced to pay the amount of Enciso's salary of P55 a month, as sergeant of the police force of Goa, from his separation from the service to his reinstatement. By a supplemental petition of the same date, Enciso sought an additional indemnity of P5,000 as moral damages, upon the ground that, although Remo had pretended to reinstate him, he was given neither a badge or a service pistol, nor the duties and responsibilities of his position as police sergeant or corporal, the functions of which were still being performed by the person who took over said position upon his (Enciso's) illegal removal from office, and that, as a consequence, he had been subjected to ridicule and embarrassment, and had, accordingly, suffered said moral damages. A reamended petition was filed on February 20, 1956—when Remo was no longer Mayor, his term having expired on December 31, 1955, and another person having assumed office since then—to include the municipality of Goa as one of the respondents in said special civil case. In due course, respondent Judge rendered a decision, on November 26, 1957, the dispositive part of which reads as follows:

"In view of all the foregoing considerations, judgment is hereby rendered: (a) ordering the respondent Deogracias Remo, in his capacity as Mayor of Goa, to pay the petitioner all his salary from the time he was refused reinstatement to the police force of Goa, Camarines Sur in August 1952, until the time when he was reinstated to his present position as Corporal in the Police Force of Goa; (b) ordering the respondent, Mayor Remo of Goa, to pay the petitioner the amount of P500.00 as moral damages and another amount of P500.00 as attorney's fees; and (c) ordering the respondent Mayor Remo, to pay the costs of the suit."

Copy of this decision was received by Enciso on December 3, 1957, and by Remo and the Municipality of Goa the next day. On motion of Enciso, dated December 24, 1957, respondent Judge, by an order dated January 16, 1958, amended said decision so as to render judgment:

"* * * (a) ordering the respondent Ex-Mayor Deogracias Remo and the Municipality of Goa to pay jointly and solidarily the salaries of the plaintiff-petitioner, Angel Enciso, from the time when he was refused reinstatement in the Police Force of Goa in August, 1952 until the time when he was reinstated in his present position as Corporal of the Police Force of Goa; (b) ordering the respondents, Ex-Mayor Deogracias Remo of Goa and the Municipality of Goa, to jointly and severally pay the petitioner, Angel Enciso the amount of P500.00 as moral damages and another amount of P500.00 as attorney's fees; and (c) ordering the respondents to pay the costs of the suit."

Prior thereto, or on December 18, 1957, Remo and the Municipality of Goa had filed a notice of appeal and an appeal bond, with the prayer that the latter be approved. On January 22, 1958, they filed another motion urging respondent Judge to act on said notice of appeal and appeal bond. This motion was denied by an order dated February 24, 1958, which respondent Judge, later, refused to reconsider. Hence the present action for a writ requiring respondent Judge to give due course to said appeal of petitioners herein.

It appearing that, after the filing of the petition herein, respondent Judge had issued a writ for the execution of his decision in Case No. 2650 and that, in compliance therewith, the Provincial Sheriff of Camarines Sur had levied upon certain properties of Remo and the municipality of Goa and was about to sell such properties at public auction, on motion of petitioners herein, and upon the filing and approval of the corresponding bond, we issued a writ of preliminary injunction suspending the aforementioned auction sale, as well as further proceedings in said case.

The refusal of respondent Judge to give due course to the appeal of petitioners herein as respondents in said Special Civil Case No. 2650, is predicated upon the theory that such case had ceased to be one of mandamus and become an ordinary action for the recovery of damages, "Angel Enciso having been reinstated by * * * Remo, while the case was pending trial", and that petitioners herein having failed to file the record on appeal required in ordinary civil actions, their appeal in said case had not been duly perfected. This conclusion is based upon an erroneous premise.

It should be noted that on August 3, 1954, Remo moved for the dismissal of the original petition in said Case No. 2650 upon the ground that he had already reinstated Enciso, and that this motion was denied by respondent Judge on August 4, 1954, for the reason that, according to Enciso, "the so-called reinstatement is only simulated". Consequently, in his amended petition, of October 6, 1954, as well as in his reamended petition of February 20, 1956, Enciso still prayed that Remo be sentenced to reinstate him as corporal of the police force of Goa and to pay the corresponding damages. What is more, in his supplemental petition of October 6, 1954, Enciso prayed for a judgment in the additional sum of P5,000 as moral damages, on account of the embarrassment and humiliation he had suffered, and the ridicule to which he had been exposed, by reason of his simulated reinstatement, without the duties and responsibilities of his position as officer of the police force, and without a service pistol or even a badge. The artificiality of said alleged reinstatement is bolstered up by Remo's answer to the original petition, as well as to the amended petition and then to the reamended petition in Case No. 2650, he having consistently asserted, by way of special defense, in his aforementioned pleading that Enciso had abandoned his office and that he could not legally be reinstated in his former position as police sergeant, because the same, he (Remo) claimed, had been abolished. These averments indicate clearly that Remo was unwilling to reinstate Enciso, despite the allegation, in his aforementioned motion to dismiss the original petition and in his answer to the reamended petition, to the effect that he (Remo) had already restored him (Enciso) to his former status in the police force. To cap it all, respondent Judge found in his decision of November 26, 1957:

"It having been clearly shown by evidence, that respondent, Deogracias Remo, in his capacity as Mayor of Goa, refused to reinstate the petitioner to his former position in the police force of Goa, despite the orders of Malacañang to do so (Exhs. G and I), and in spite of the opinion of the Secretary of Finance (Exhibit H), the

respondent Mayor of Goa willfully acted in bad faith, and therefore, he, as mayor of Goa, should pay for damages caused to the petitioner, Angel Enciso."

The fact that Remo had ceased to be the mayor of Goa on December 31, 1955, and that, accordingly, he could not be compelled, thereafter, to reinstate Enciso, for want of authority to do so, even if he wanted to, is immaterial to the issue before us. As long as Enciso insisted in maintaining in his petition—and he did in all his pleading—that he had not been actually reinstated, and in praying for an order of reinstatement—regardless of the merits and demerits of this prayer—the case retained its original character as a special civil action for mandamus. Indeed, the nature of a proceeding is determined by the allegations in the pleadings and the relief therein sought—not by the validity of the claim therefor. Hence, it is not necessary for petitioners herein, as respondents in Special Civil Case No. 2650, to file a record on appeal in order to seek a review, by a higher court, of the decision rendered by respondent Judge.

Wherefore, the latter is directed to approve the appeal bond submitted by petitioners herein as respondents in said Case No. 2650, and to give due course to the appeal therein taken by petitioners herein as such respondents in the aforementioned case, and the writ of preliminary injunction issued in the present case is hereby made permanent, with costs against respondent Angel Enciso. It is so ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, and Gutierrez David, JJ., concur.

Reyes, J.B.L., J., took no part.

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