

RAMON TAPALES, PETITIONER AND APPELLEE, VS. THE PRESIDENT AND BOARD OF REGENTS OF THE UNIVERSITY OF THE PHILIPPINES, RESPONDENTS AND APPELLANTS.

G.R. No. L-17523. March 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

Ramon Tapales, Petitioner-Appellee herein, was, prior to December 5, 1945, a duly appointed Director of the Conservatory of Music of Silliman University in Dumaguete. On December 5, 1945, by a resolution of the Board of Regents, upon recommendation of the President of the University of the Philippines, he was appointed Acting Director of the Conservatory of Music of the UP. Because of the requirement of the UP Charter (Sec. 10), providing that deans; or directors are to be selected from among the members of the faculty, Tapales was on the same date (Dec. 5, 1945), extended an appointment as professor of violin and chamber music. Such appointment (as professor) was also necessary for salary rating purposes. On August 14, 1947, likewise by resolution of the Board of Regents, Tapales was appointed permanent and regular Director of the UP Conservatory of Music. With the view of increasing his salary to an amount befitting his new status, as regular and permanent Director, and for salary rating purposes, other appointment increasing his salary as professor of violin and chamber music from P4,800.00 in 1947 to P7,560.00 in 1956, were extended to him (Exhs. 2-6).

Under date of October 2, 1959, the Board of Regents. of the UP approved the following resolution—

"Term of office, duties and functions of deans and directors—

"The term of office of all deans of colleges and directors or heads; of schools and institutes of the University of the Philippines shall be five (5) years from the date of their appointment; and the present deans and directors who have served five (5) years or more, previous to the approval of this resolution, shall continue to serve in such capacities, only until May 31, 1960, unless re-appointed for another term of five years."

"The functions of the dean or director shall be to act as presiding officer of the faculty of the college, the school, or the institute as prescribed by the charter of the University and to exercise such other administrative duties which the Board of Regents, on recommendation of the President of the University may prescribe. No dean or director shall serve as academic head of any department or division in his college, school or institute."

On April 18, 1960, respondent-appellant President of the UP, promulgated the following"—

MEMORANDUM TO

Deans and Directors—

University of the Philippines.

"Dean and directors whose terms will expire on May 31, 1960; as provided, in the resolution of, the Board of Regents of October 2, 1959, are hereby informed that unless notified of the action of this office recommending their reappointment on or before May 1, 1960 shall consider their term as deans automatically terminated on May 31, 1960, but shall remain members of the faculty with their rank that they are actually holding on the date

of this, notice.

"You are advised of the resolution of the Board of Regents adopted in its meeting of April 12, 1960, which runs as follows:

"Starting with the new deans and directors, every dean shall be entitled to only one salary which shall be the salary in the regular scale of his rank as faculty member, except when a higher salary is expressly provided for him by reason of superior qualifications. The dean shall be entitled to reduce the number of his teaching hours at his discretion."

Tapales, not having been recommended for reappointment as Director of the Conservatory of Music of the UP, and the termination of his appointment as such being imminent, presented to the CFI of Rizal, Quezon City Branch, a petition asking that the Resolution of the Board of Regents of the UP dated October 2, 1959, be declared unconstitutional and that the UP President and board to restrain said respondents from carrying out and enforcing the resolution of October 2, 1959. Tapales further asked for the issuance of a writ of preliminary injunction, to restrain said respondents from carrying out and enforcing the Resolution and implementing the Memorandum Of April 18, 1960, from removing him from the position of Director of the Conservatory of Music and from appointing any other person to replace him. The petition was given due course, and the writ of preliminary injunction prayed for was issued. Respondents, answering, after the usual admissions and denials alleged as Special and Affirmative Defenses, that the Director or Dean in the University of the Philippines performs administrative function and not academic, that he holds office at the pleasure of the Board of Regents and can be removed without cause and without hearing; that what is protected by the Constitution and the Civil Service Law is his position as member of the academic faculty (professors and members of the teaching staff), not as member of the administrative staff; that under the resolution in question, petitioner remains and continues to be a professor and member of the academic faculty; that the UP Charter (Sec. 6[e], refers to faculty and employees and not to Deans or Directors and that petitioner had not exhausted the administrative remedies. In connection with the writ of preliminary injunction ex parte, the respondents claimed it should not have been issued because the resolution is presumed valid; petitioner will not suffer irreparable injury by the enforcement of the resolution in question; that refusal of petitioner to comply with the resolution is a defiance of the duly constituted authorities and the stay of enforcement of the resolution will cause injury to the administrative policies of the University which can not be compensated permanently. A prayer for the dissolution of the writ of preliminary injunction and the dismissal of the petition was invoked by respondents. After trial, the lower court rendered judgment, the pertinent portions of which read—

"* * * In view of the above considerations, the Court renders judgment one in favor of the petitioner, Ramon Tapales, and against the respondents, the President and Board of Regents of the University of the Philippines, by declaring the Resolution of October 2, 1959, NULL and VOID, being contrary to the Constitution, the Civil Service Law of 1959 and even to the Charter of the University concerned and, consequently, the Court permanently prohibits and enjoins the respondents from enforcing the same, inasmuch as there was a preliminary injunction, previously issued, the same is therefore made permanent as against the respondents, but without cost."

Respondents appealed directly to this Court, assigning five (5) errors, allegedly committed by the lower court, all of which can be consolidated into the following issues: (1) Whether or not the Board of Regents of the University of the Philippines has the power, under the Charter of said University, to fix the terms of office of deans and directors to five years; and (2) Assuming arguendo that it has that power, whether or not its resolution can be given retroactive effect, so as to limit to five years the terms of office of such deans and directors who had been appointed in a permanent capacity before the passage of the resolution.

For the purposes of this opinion, it would seem that the resolution of the second question is decisive. For, assuming, in gratia argumehti, that the UP Board of Regents has the power to limit the terms of office of deans or directors, such limitation can not affect deans or directors who had been appointed in a permanent capacity before the passage of the resolution in question, such as the case of appellee Director Ramon Tapales.

A dean or a director is embraced in the non-competitive or unclassified civil service (Art. XII, Constitution, sec. 3, sec. 5 (e), Rep. Act No. 2260, Philippines Civil Service Law). As such, he is protected against removal or suspension except for cause, as provided by law and after due process (Art. XI, sec. 4, 'Constitution; section 694 Rev. Adm. Code; sec. 32, Rep. Act No. 2260, Civil Service Act of 1959). The constitutional and statutory guaranty of security of tenure is extended to both those in the classified and unclassified civil service (Lacson vs. Romero, 84 Phil., 740; Garcia vs. Lejano, 109 Phil., 116. The cause must naturally have some relation to the character or fitness of the officer or the employee, for the discharge of the functions of his office. To apply the resolution of the Board of Regents of October 2, 1959, to Director Tapales who had been appointed in a permanent capacity prior to the passage of the resolution, would result in his removal without cause. Without any reason whatsoever relating to his character and fitness for his office, his term of office is cut short, when it should continue during good behaviour. To shorten the term of a dean or director, officer or any employee, for that matter, when at the time of his appointment, he knew he would hold office during good behaviour or at least, he was made to understand in virtue of his selection or appointment, that he would hold office during good behaviour, amounts to a plain and simple removal without cause, and without hearing or investigation. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law (Lacson vs. Romero, et al., 47 Off. Gaz., 1778, 1785).

In view of the conclusions reached, We deem it unnecessary and irrelevant to discuss and determine the first issue.

It is contended in this connection, that the appellee failed to exhaust his administrative remedies by not asking the Board of Regents to reconsider the challenged resolution before bringing the matter to court. An administrative review is not a condition precedent to judicial relief against a statute or ordinance which is claimed to be unconstitutional and void (73 C.J.S. 357), or where the question in dispute is purely a legal one, and nothing of an administrative nature is to be or can be done (73 C.J.S. 354). Here, appellee impugned the constitutionality and validity of the Resolution of October 2, 1959, and appellee's objection thereto is a purely legal one. .

In view hereof, the appellants are hereby permanently restrained from enforcing the resolution of October 2, 1959, against the herein appellee Ramon Tapales, and other similarly situated and affected, with costs against the appellants.

Bengzon,, C. J., Padilla, Baubista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon and Makalintal, JJ., concur.

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