

**MANUEL R. SOLIVIO, PETITIONER VS. HON. FRANCISCO ARELLANO,
JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, AND THE MUNICIPAL COUNCIL OF CADIZ, NEGROS
OCCIDENTAL, RESP...**

G. R. No. L-15876. April 30, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The events which gave rise to this petition were as follows: In G. R. No. L-10535 this Court reversed, on appeal, a decision of the Court of First Instance of Negros Occidental in Civil Case No. 3132 and ordered the reinstatement of herein petitioner, Manuel R. Solivio, to the position of Chief of Police of Cadiz, from which he had been removed on 30 May 1955. In G. R. No. L-9124, on a petition for certiorari and mandamus, we set aside the order of execution of its judgment issued by the trial court pending appeal. In compliance with our decisions the court below, through Honorable Francisco Arellano, Judge, issued an order dated 6 July 1957, the dispositive part of which reads:

"Wherefore, the Court, finding the explanations oral and written, given by Mayor Heraeleo Villacin not satisfactory, hereby orders the said Mayor to reinstate petitioner Manuel R. Solivio as chief of police of Cadiz, Negros Occidental, within twenty-four (24) hours from receipt hereof, with payment of his back salaries, otherwise the arrest of the said mayor will be ordered.

Pursuant to the foregoing order respondent Heracleo Villacin, Municipal Mayor of Cadiz, reinstated petitioner on 9 July 1957. He assumed the duties of his office on that day, but the very next day, 10 July, Mayor Villacin filed administrative charges against him under Republic Act No. 557 and forthwith suspended him from his position. Solivio then went to court and moved that his suspension be lifted. On 20 July, 1957 Judge Arellano issued the following order:

"Premises Considered, the Court grants the motion of petitioner Manuel R. Solivio, and orders the respondent Mayor, Heracleo Villacin of Cadiz, Negros Occidental, to reinstate once more the petitioner to the position of chief police of the said municipality, within twenty-four (24) hours, without prejudice to the continuation of the administrative charges against the said petitioner. Failure the respondent Villacin to comply with this order within the time granted herein, will constrain the Court to order for his immediate arrest."

Mayor Villacin came to this Court with a petition for certiorari and prohibition to seek a review of the order just quoted, with a prayer for preliminary injunction. The petition was docketed here as case G. R. No. L-12590. We granted the injunction and restrained respondent Judge Arellano from enforcing his order of reinstatement. Consequently Solivio remained under suspension pending the outcome of the administrative investigation.

On 7 December 1957 the municipal council of Cadiz, which conducted said investigation in accordance with Republic Act No. 557, found him guilty of the charges and ordered his dismissal from the service for cause. Solivio appealed the council's decision to the Commissioner of Civil Service. On 13 February 1959 that official

affirmed the order of dismissal as follows:

"Premises considered, respondent-appellant is found guilty of counts 2 (dishonesty), 3 (prohibited interest in property) and 4 (insubordination). Wherefore, the decision of the Municipal Council of Cadiz, Negros Occidental, dismissing respondent-appellant Manuel R. Solivio from the service is hereby affirmed, his dismissal to take effect on his last day of service with pay."

Meanwhile, on 30 January 1959, two weeks before the Commissioner of Civil Service decided the administrative case, we denied the petition for certiorari and prohibition filed by Mayor Villacin (G. R. No. L-12590), in effect, upholding the lower court's order of 20 July 1957 for the reinstatement of Solivio Without prejudice to the continuation of the administrative charges against him.

After receipt of our decision in G. R. No. L-12590 Solivio filed in respondent court, on 30 March 1959, an "ex-parte motion to issue writ of execution. What could properly be executed in the ordinary course was the order of 20 July 1957, since that was the order which had been reviewed and upheld by us. However, the motion for execution did not refer to it, but rather, to the previous order of reinstatement dated 6 July 1957, which had been complied with and implemented on 9 July 1957, when Solivio was actually reinstated as Chief, of Police by Mayor Villacin. The fact of such reinstatement has not been denied by herein petitioner and indeed is one of the findings in our decision in G. R. No. L-12590, as follows:

"Villacin filed a motion for reconsideration (Annex "G", petition) but the same was denied and Judge Francisco Arellano, by order of July 6, 1957 (Annex H), directed Villacin to restore Solivio to the post of Chief of Police of Cadiz within twenty-four hours under pain of arrest. Villacin complied with said order and reinstated Solivio on July 9, 1957 (Annex I, Petition), and Solivio acknowledged his reinstatement (Annex J)."

Anyway the motion for execution was submitted and Honorable Jose R. Querubin, then vacation Judge of the court below, granted the same and issued the writ on 3 April 1959, ordering compliance with order of 6 July 1957. Under date of 21 April 1959 the Provincial Fiscal of Negros Occidental, for and in behalf of the Mayor and the municipality of Cadiz, moved to quash the writ of execution on the ground that if it referred-as it did on its face-to the order of 6 July the same had been complied with; and that if it referred-as it should have-to the order of 20 July, the said order could no longer be carried out in view of the fact that Solivio had been found guilty and dismissed in the administrative case and therefore the question of his reinstatement, or more accurately the lifting of his suspension pending investigation of that case, had become purely academic.

Solivio filed an opposition to the Fiscal's motion to quash; and after hearing, respondent Judge Francisco Arellano, who had returned from vacation in the meantime, granted the motion and dissolved the writ of execution in an order dated 3 June 1959. Solivio moved for reconsideration, and after the motion was denied instituted the instant petition for "certiorari, mandamus and prohibition, with preliminary mandatory injunction. The main prayer is that the foregoing orders of respondent Judge be set aside; that he be commanded to issue a writ of execution reinstating petitioner as Chief of Police of Cadiz; that the other respondents be prohibited from enforcing the order of the municipal council dated 7 December 1957, removing petitioner from office; and that in the meantime a writ of preliminary mandatory injunction issue for petitioner's immediate reinstatement. The mandatory injunction, however, has not been granted.

Upon the foregoing facts it is clear that the instant petition has no merit. Petitioner's right to be reinstated, as it formerly existed, was based upon our decisions in cases G. R. Nos. L-9124 and L-10535, pursuant to which the order of execution dated 6 July 1957 was issued. That order became functus officio when it was implemented and petitioner assumed office as Chief of Police on 9 July 1957. His suspension the next day, 10 July, was based on an entirely new situation, namely, the filing of administrative charges against him under Republic Act 557. True, the suspension was ordered lifted by respondent Judge Arellano on 20 July 1957 and in the ensuing

certiorari-prohibition proceeding brought before us by respondent Heracleo Villacin (G. R. No. L-12590) the said order was upheld. But since it was expressly issued without prejudice to the continuation of the administrative charges, and since such charges were thereafter duly investigated and petitioner herein was found guilty thereof, both by the municipal council of Cadiz and, on appeal, by the Commissioner of Civil Service, the order lifting the suspension has become purely academic. It should, be noted that the validity of the administrative investigation was not an issue before us. It was conducted by the agencies specified by law for that purpose. The appeal to the Commissioner of Civil Service was taken by Solivio himself. To order petitioner's reinstatement now would be in effect to override and annul the decision of that official, rendered in the exercise of his jurisdiction—a result beyond the purview of the order of respondent judge of 20 July 1957 and of our decision in case G. R. No. L-12590.

It would seem that the outcome of said case has turned out to be a pyrrhic victory for petitioner. But it is not as if his long odyssey in the several litigations he has undergone is for naught: his right to the office and to the emolument pertaining thereto has been upheld up to 9 July 1957, and the Provincial Fiscal of Negros Occidental, as counsel for respondents, has manifested in his answer to the petition that the municipality of Cadiz is now ready and willing to pay Solivio roughly P3,800.00 for his unpaid back salaries up to his last day of service with pay, which covers the period from May 30, 1955 to July 9, 1957."

In view of the foregoing considerations, the writ prayed for is denied, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Paredes, and Regala, JJ., concur.

Barrera, J.; reserves his vote.

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