

**MARIA L. VDA. DE MISA AND MILAGROS MISA GUTIERREZ,
PLAINTIFFS-APPELLANTS, VS. NATIONAL MARKETING
CORPORATION, DEFENDANT-APPELLEE.**

G.R. No. L-20701. April 27, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from a decision of the Court of First Instance of Manila (civil case 47197) dated September 24, 1962, dismissing a complaint for the recovery sum of money filed by Maria L. Vda. De Misa and Milagros Misa Gutierrez against the National Marketing Corporation (NAMARCO).

On September 16, 1950 Nicolas Misa was suspended from office as acting second assistant general manager of the Phi-lippine Relief and Trade Rehabilitation Administration (PRATRA), pending the outcome of criminal charges filed against him and one Faustino Gomez by the city fiscal of Manila (crim. case 13707).

On October 3, 1950 the PRATRA was abolished, and the Price Stabilization Corporation (PRISCO) was created (Ex. Order 350, Oct. 3, 1950). In a decision rendered by the CFI of Manila in said criminal case on June 9, 1952, Nico-las was acquitted of all the charges against him. The PRIS-CO thereafter paid him his salary covering the period from September 16 up to and including October 2, 1950, as well as the money value of all his earned and unused vacation and sick leaves up to and including the last date mentioned, and, upon his application, a gratuity corresponding to his entire service in the Government from July 29, 1946 up to October 2, 1950. Thereafter, he demanded from the PRISCO, and later from the NAMARCO,[1] payment of his accrued salary and the money value of his earned and unused vacation and sick leaves corresponding to the period of his suspension from September 16, 1950 to June 9, 1952. Both entities denied the claim on the ground that he was not entitled to any salary after October 2, 1950 because the PRATRA was abolished on the following day.

Nicolas Misa died on May 19, 1956. On June 1, 1961 the present complaint was filed by his surviving spouse Maria L. Vda. de Misa and a legally adopted child Milagros Misa Gutierrez, for the recovery of the salary claimed by the deceased, less a sum equivalent to 4-2/12 month's salary, at the rate of P10,800 per annum, the money value corresponding to the earned and unused vacation and sick leaves, plus legal interest on the total sum from June 9, 1952, until fully paid, and P5,000 attorney's fees, aside from costs. They alleged that the defendant is liable therefor as the universal successor-in-interest of the PRISCO which, in turn, was also the universal successor-in-interest of the PRATRA, and which entities (PRISCO and NAMARCO) suc-ceeded to all the rights and assumed all the obligations of the PRATRA; and that the deceased is entitled to his sala-ries and the money value of his earned and unused vacation and sick leaves corresponding to the entire period of his suspension, because he had not been dismissed or separated from the service.

Liability is disclaimed by the NAMARCO, which avers that it is not the universal successor-in-interest of the PRISCO, pursuant to R.A. 1345; that it was justified in refusing to satisfy the claim of the deceased, invoking section 12 of Exec. Order 350 which provides that the personnel of the PRATRA, transferred to the PRISCO,

"shall be reappointed in the PRISCO and those not reappointed within sixty days from the effective date of this Order (Oct. 3, 1950) shall be considered separated from the service" and that since the deceased was not extended a reappointment by the PRISCO, he is considered as having been separated from the service as of October 3, 1950. Citing *Lopez vs. Board of Directors and General Manager of the NAMARCO* (101 Phil. 349), the defendant further asserted that the deceased, and the plaintiffs as his heirs, are estopped from questioning the validity of his separation from the service, for he applied for and was paid his gratuity pay of 4-2/12 months corresponding to the entire period of his service with the Government, aside from his salary up to and including October 2, 1950, and the money value of all his earned and unused vacation and sick leaves up to the said date.

After the issues were joined, the plaintiffs filed a "Motion for Summary Judgment", alleging that there is no substantial controversy as to the facts of the case, and "whatever seeming or apparent controversy there may be on the facts" may be resolved by affidavits and other direct and unavailable documents.

On September 24, 1962 the lower court, after the parties had submitted their respective memoranda on the legal issues involved, dismissed the complaint, holding that the deceased is not entitled to payment of his claim. In an order issued on the following November 3, it denied the plaintiffs' motion for reconsideration.

Hence the present recourse.

It is our considered view that the court a quo did not err in dismissing the complaint.

1. Nicolas Misa, upon the dissolution of the PRATRA effective October 3, 1950 (sec. 15, Ex. 0.350), must be considered as having been separated from the service. He did not become automatically re-employed consequent upon the creation of the PRISCO on the same date, for although the personnel of the PRATRA were "transferred" to the PRISCO, a reappointment by the latter entity within sixty days from its creation was a necessary condition for employment therein (Sec. 12, Executive Order 350).[2] The fact that he was under suspension when the PRATRA was dissolved did not place him beyond the purview of the said section 12. Even if he was under suspension he needed a reappointment in the same manner as other personnel of the PRATRA not under suspension needed reappointment. And we cannot make any distinction to the effect that only those not under suspension required reappointments, for neither the section in question nor the Executive Order itself makes such distinction.

2. Having accepted and enjoyed his gratuity pay corresponding to the period of his continuous service in the Government from July 29, 1946 to October 2, 1950, aside from his salary corresponding to the period from September 16 to October 2, 1950, as well as the money value of his earned and unused vacation and sick leaves up to the last date mentioned, Misa is now estopped, or is deemed to have waived the right, to contest his separation from the service. The appellants herein, being his successors-in-interest, are bound by that estoppel or waiver.

"The amount received by petitioners by way of gratuity was, therefore, P1,375. Obviously, however, he would have had no right thereto had he not been laid-off or retired from the service. Having thus accepted and enjoined the benefits resulting from his retirement, he is now estopped from questioning its validity or deemed to have waived the right to contest it." (*Lopez vs. Board of Directors and Gen. Manager of the National Marketing Corporation*, 101 Phil. 349, 355, and the authorities therein cited.)

3. At all events, the present claim, occasioned as it is by the abolition of the PRATRA and the consequent creation of the PRISCO, cannot be recovered from the NAMARCO. For while section 12 of Exec. Order 350 provides that the obligations, liabilities and contracts of the PRATRA were "transferred to * * * and assumed by the PRISCO", nevertheless the settlement and payment of "other assets, liabilities and obligations of the PRISCO" were ordained to be handled by an entirely separate and distinct entity, the Board of Liquidators, and not by the NAMARCO

(sec. 18(b)(2) of R.A. 1345, June 17, 1955).

ACCORDINGLY, the judgment a quo is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] By the enactment of Republic Act 1345, the PRISCO was abolished and the NAMARCO was created.

[2] SEC. 12. The personnel, records, properties, equipment, assets, rights, choses in action, obligations, liabilities, and contracts of the Philippine Relief and Trade Rehabilitation Administration and the National Rice and Corn Corporation are hereby transferred to, vested in, and assumed by the PRISCO, and all their business and affairs shall be liquidated, assumed, and continued by the PRISCO; Provided, That an inventory and valuation of the properties, equipment, assets, rights, choses in action, obligations, liabilities, and contracts of said corporations shall be made by the Auditor General, and during the inventory and valuation, the accountable officers of said corporations shall continue to be fully accountable therefor, until actual physical transfer to, and acceptance by, the corresponding accountable officers of the PRISCO; Provided, further, That the personnel of said corporations hereby transferred shall be reappointed in the PRISCO and those not reappointed within sixty days from the effective date of this Order shall be considered separated from the service."

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