

THE CITY OF BUTUAN, PETITIONER, VS. HON. JUDGE MONTANO A. ORTIZ, ET AL., RESPONDENTS.*G.R. No. L-18054. December 22, 1961*

Ponente: LABRADOR, J.

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The amended petition in the above-entitled case seeks to annul an order of the Court of First Instance of Agusan, Hon. Montano Ortiz, presiding, dated January 13, 1960, ordering the execution of the court's decision in Special Civil Action No. 16 of that court, entitled "Julieto Semine and Justiniano Soriano, petitioners, vs. Zacarias Pizarro, respondent", dated August 13, 1954, rendered by Judge Francisco Area, in which decision the court ordered Zacarias Pizarro, respondent, to reinstate immediately as police corporal petitioner therein Soriano.

The record discloses that on March 9, 1954, administrative charges for physical injuries and electioneering were filed with the Municipal Board of Butuan City against Justiniano Soriano. On March 11, 1954, Soriano was suspended by Mayor Pizarro of Butuan City. The decision of the Board dated May 9, 1954 found Soriano guilty as charged. On the same date, appeal was brought by Soriano to the Commissioner of Civil Service.

Said Special Civil Action No. 16 was filed in the Court of First Instance of Agusan on June 1, 1954. In the petition it is alleged that the 60 day period of suspension provided for in Republic Act No. 557 had already elapsed and the case against Soriano had not been finally decided. So Soriano sought to compel Mayor Pizarro to reinstate him pursuant to said Act. Decision was rendered on August 13, 1954, favorable to petitioner Soriano, ordering Soriano reinstated pending termination of the administrative charges filed against him.

On November 27, 1954 the Commissioner of Civil Service to whom the decision of the Municipal Board had been appealed by petitioner Soriano, affirmed the decision of the Municipal Board, finding respondent Soriano guilty and separating him from the service. On January 12, 1960 (less than five years from the date of the judgment) attorney for Soriano filed an ex-parte motion to execute the judgment of Judge Area for reinstatement. This motion was granted by the court. The court refused to reconsider said order of execution, hence the petition in; this case was presented to set aside the order of execution, on the ground that the court committed a grave abuse of discretion in ordering the said execution of the judgment as the Commissioner of Civil Service has already affirmed the decision of the Municipal Board finding Soriano guilty of the charges and separating him from the service.

We find merit in the petition. When on January 12, 1960, Soriano demanded the execution of the judgment in Special Civil Action No. 16 of the Court of First Instance of Agusan, appeal by Soriano to the Civil Service Commissioner from the decision of the Municipal Board had long ago been decided against him by the Commissioner of Civil Service, said decision being dated November 29, 1954. It is to be noted that the right of action invoked by Soriano in Special Civil Action No. 16 in the Court of First Instance of Agusan was based on the failure of the Municipal Board to decide the case within 60 days as required by Republic Act No. 557. It is true that the judgment was correct because the suspension was ordered on March 11, 1954 and by June 1, 1954,

when the petition for mandamus was filed in the Court of First Instance, more than 60 days have already expired without the case having been decided. It is true that the decision of the Court of First Instance in said special civil action continued to be executory when the motion for execution was presented, because the 5-year period within which a decision of the court may be enforced by motion had not yet expired, but as it was alleged and shown in the motion for the reconsideration of the order granting execution, that the Commissioner of Civil Service had already affirmed the decision of the Municipal Board finding Soriano guilty on November 29, 1954, the right to reinstatement was barred by the decision of the Commissioner of Civil Service. This decision of the Civil Service Commissioner finding Soriano guilty was a valid impediment to the execution of the aforesaid decision for reinstatement. In other words, a supervening cause or reason had arisen which has rendered the decision of the court ordering reinstatement, no longer enforceable.

"Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (Molina vs. De la Riva, 8 Phil., 569; Behn, Meyer & Co. vs. McMicking, 11 Phil., 276; Warner, Barnes & Co. vs. Jaucian, 13 Phil., 4; Espiritu vs. Crossfield and Guash, 14 Phil., 588; Flor Mata vs. Lichauco and Salinas, 36 Phil., 809). In the instant case the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of P995, but in a lesser amount. Sto. Domingo had no right to an execution for the amount claimed by him." (De la Costa vs. Cleofas, 67 Phil., 686-693).

For the foregoing considerations the writ prayed for is hereby granted, and the order for the execution of the judgment of the Court of First Instance in Special Civil Action No. 16 "Soriano vs. Pizarro" is hereby set aside. With costs against respondent Justiniano Soriano.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and De Leon, JJ., concur.

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