

**ELIAS V. PACETE, PETITIONER, VS. THE HONORABLE ACTING
CHAIRMAN OF THE COMMISSION ON AUDIT, THE HONORABLE
ASSISTANT EXECUTIVE SECRETARY, MIGUEL PENALOSA, JR., IN HIS
CAPACITY AS ...**

G.R. No. L-39456. May 07, 1990

Ponente: CORTES, J.

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CORTES, J.:

On July 22, 1968, petitioner Elias V. Pacete was appointed by the then Mayor Antonio C. Acharon of General Santos City as City Attorney of the said city. On June 24, 1971, Mayor Acharon was charged with murder in the Court of First Instance of General Santos City and was detained without bail. A few months later, on November 8, 1971, Mayor Acharon ran for and was reelected as City Mayor of General Santos City pending the criminal case against him and even while he was in jail. On January 1, 1972, Mayor Acharon issued Administrative Order No. 1 designating Vice Mayor Erlindo R. Grafilo as Acting Mayor. On June 29, 1972, Acharon, while still in prison, issued another memorandum which had the effect of revoking the aforementioned January 1, 1972 memorandum.

Subsequently, Acharon filed two cases with the Supreme Court challenging the authority of Acting Mayor Grafilo to act as such, claiming that notwithstanding the fact that he was confined as a detention prisoner due to the murder charge against him, Acharon may lawfully discharge the duties and functions of the Office of the Mayor of General Santos City. Both petitions, *City of General Santos and Hon. Antonio Acharon v. Atty. Erlindo Grafilo, et al.*, G.R. No. 35303 and *Antonio C. Acharon v. Pedro Samson C. Anomas, et al.*, G.R. No. L-33835, were dismissed by the Court. The Court, in a Resolution dated October 20, 1972 stated that "the continued detention of . . . Antonio Acharon in jail, pending hearing and determination of his case of murder, for which he has been denied bail, constitutes temporary incapacity to discharge the duties of his Office of Mayor of General Santos City, under Section 17 of Republic Act No. 6388 which incapacity justifies the assumption of the Office of Mayor by respondent Vice-Mayor Erlindo Grafilo . . ." [*City of General Santos and Hon. Antonio C. Acharon v. Atty. Erlindo Grafilo, et al.*, G.R. No. L-35303, October 20, 1972.]

In the meantime, acting Mayor Erlindo Grafilo suspended petitioner Elias V. Pacete as City Attorney for a period of ten (10) days effective July 11, 1972. Finally, on July 20, 1972, notice was served on petitioner that he had been removed as the City Attorney of General Santos City on the ground of loss of confidence. Ostensibly, the Acting Mayor's loss of confidence in petitioner was the result of the legal opinion of the latter impugning the authority of Acting Mayor Grafilo to act as such and upholding the authority of Mayor Acharon to discharge the functions of the Office of the Mayor even while the latter was in prison.

Petitioner appealed to the Civil Service Commission the termination of his services as City Attorney. The Acting Commissioner on Civil Service in an indorsement dated October 13, 1972 directed Acting Mayor Grafilo to allow Atty. Pacete to continue in service as City Attorney pending resolution of the merits of his appeal. Acting Mayor Grafilo disregarded the directive of the Civil Service Commissioner branding the same as an illegal order and

contrary to the Supreme Court decisions in *Claudio vs. Subido*, 40 SCRA 481 and *Besa vs. PNB*, 33 SCRA 330. On September 14, 1972, Acting Mayor Grafilo appointed Atty. Hilarion Polistico as City Attorney of General Santos City.

On October 12, 1972, petitioner filed with the City Treasurer of General Santos City a claim for the payment of his back salaries in the amount of P2,275.00 corresponding to the period from July 11 to October 15, 1972 invoking in support of his claim the aforementioned directive of the Commission on Civil Service. Petitioner's voucher was forwarded by respondent City Treasurer to respondent City Auditor who in turn referred the same to the Auditor General in an indorsement dated October 26, 1972 for decision. The Auditor General referred the claim to the Office of the President for opinion. On February 18, 1974, the respondent Assistant Executive Secretary, by Authority of the President, rendered an opinion stating that: (1) the termination of petitioner's services as City Attorney by Acting Mayor Grafilo was in accordance with law and; (2) Atty. Pacete may not rightfully demand payment of back salaries for the period during which he was out of the service and was physically and legally not discharging his duties as City Attorney of General Santos City [Annex "I" to the Petition; Rollo, p. 64.] Petitioner filed a motion for reconsideration which was denied by respondent Assistant Executive Secretary on July 8, 1974 [Annex "J" to the Petition; Rollo, p. 72.] On May 22, 1974, the Commission on Audit, which by virtue of the 1973 Constitution took over the powers and functions of the Auditor General, rendered a decision disallowing petitioner's claim for backwages. Consequently, respondent City Auditor Miguel Penalosa, Jr. refused to pass in audit petitioner's claim for backwages [Annex "R" to the Petition; Rollo, p. 103.]

On October 15, 1974, petitioner filed the present petition with essentially the following prayers: (1) payment of backwages from the time petitioner was suspended on July 11, 1972 until the final termination of this case; and (2) payment by respondent City Auditor Miguel Penalosa, Jr. of damages for his refusal to pass in audit petitioner's claim for backwages. Petitioner did not pray for reinstatement.

After the filing by the parties of their respective pleadings, the Court, through its Second Division, resolved on June 30, 1975, to consider the case submitted for decision. Unfortunately, no action was taken thereon until after the reorganization of the Court upon the ratification of the 1987 Constitution.

On February 8, 1988, the Court, noting the considerable length of time during which the case has been pending and to determine whether supervening events have rendered the case moot and academic required the parties to move in the premises.

The respondents City Auditor and City Treasurer of General Santos City filed a manifestation claiming that the case has become moot and academic because petitioner has been appointed Hearing Officer IV of the National Police Commission on February 25, 1976. On the other hand, the Solicitor General filed a manifestation stating that: (1) there is no showing that the parties have lost interest in the case; and (2) there is no supervening event which would render the case moot and academic. Likewise, petitioner filed a manifestation underscoring his interest in pursuing the case and reiterating his claims for backwages and damages.

Petitioner first assails the legality of the opinion of respondent Assistant Executive Secretary contending that the decision of the Auditor General cannot be reviewed by the Office of the President without violating the principles of separation of powers and non-delegation of powers.

This contention is unmeritorious because the Office of the President did not review the ruling of the Auditor General. Instead, what transpired was the referral of petitioner's case by the Auditor General to the Office of the President for opinion, on the basis of which the respondent Acting Chairman of the Commission on Audit, who as noted earlier took over the functions of the Auditor General, rendered a decision disallowing petitioner's claim [Annex "K" to the Petition; Rollo, p. 102.] In other words, the respondent Acting Chairman of the Commission on

Audit did issue a separate decision rejecting petitioner's money claim. It cannot, therefore be claimed that the Commission on Audit (formerly the Auditor General) abdicated in favor of the Office of the President its authority over cases involving the settlement of accounts or money claims against the government.

Petitioner next contends that the failure of the Auditor General to decide his claim within sixty (60) days from the presentation of the same resulted in the automatic grant of petitioner's claim for backwages in accordance with Sec. 1 of Commonwealth Act No. 327.

This contention is bereft of merit. Sec. 1 of Commonwealth Act No. 327 provides:

Section 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty (60) days, exclusive of Sundays and holidays, after their presentation.

In *Carabao, Inc. v. Agricultural Productivity Commission*, G.R. No. L-29304, September 30, 1970, 35 SCRA 224, the Court held that in case of failure by the Auditor General to decide a claim within sixty (60) days, a claimant's remedy is to institute mandamus proceedings to compel the rendition of a decision by the Auditor General. The lapse of the sixty (60) day period does not result in the automatic grant of the claim. Nowhere in Commonwealth Act No. 327 can the petitioner's theory of automatic grant be inferred.

Having resolved the preliminary issues, the Court will now deal with petitioner's claim for backwages which is anchored on the legality of the termination of the services of petitioner as City Attorney of General Santos City, which, in turn, hinges on the issue of whether or not the position of City Attorney is confidential, for which loss of confidence is a valid ground for termination.

This is not the first time that this question has been raised before the Court. In *Besa v. Philippine National Bank*, G.R. No. L-26838, May 29, 1970, 33 SCRA 331, the Court ruled that the position of Chief Legal Counsel of the Philippine National Bank is both confidential and technical in nature. In *Claudio v. Subido*, G.R. No. L-30865, August 31, 1971, 40 SCRA 481, 484, the Court likewise ruled that "[t]he position in question, that of the City Legal Officer, is one that requires the utmost confidence on the part of the Mayor."

The same conclusion was reached by the Court in *Cadiente v. Santos*, G.R. No. L-35592, June 11, 1986, 142 SCRA 280, where petitioner Cadiente was discharged as the City Legal Officer of Davao City by the newly elected mayor on the ground that the position was primarily confidential in nature. In upholding Cadiente's termination, the Court stated the following:

In resolving the merits of the instant case, We find as an undeniable fact that the position of a City Legal Officer is one which is "primarily confidential". This Court held in the case of *Claudio vs. Subido*, L-30865, August 31, 1971, 40 SCRA 481, that the position of a City Legal Officer is one requiring that utmost confidence on the part of the mayor be extended to said officer. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected. As stated in the case of *Pinero vs. Hechanova*, L-22562, October 22, 1966, 18 SCRA 4176 (citing *De los Santos vs. Mallare*, 87 Phil. 289), the phrase 'primarily confidential' "denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse, without embarrassment on freedom from misgivings of betrayals of personal trust on confidential matters of state." (Italics supplied).

The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal (*Corpus vs. Cuaderno*, L-23721, March 31, 1965, 13 SCRA 591-596). When such confidence is lost and the officer holding such position is separated from the service, such cessation entails no removal but an expiration

of his term. In the case of Hernandez vs. Villegas, L-17287, June 30, 1965, 14 SCRA 548, it was held -

It is to be understood of course that officials and employees holding primarily confidential positions continue only for so long as confidence in them endures. The termination of their official relation can be justified on the ground of loss of confidence because in that case their cessation from office involved no removal but merely the expiration of the term of office - two different causes for the termination of official relations recognized in the Law of Public Officers.

The Court, after a careful consideration of the instant case, finds no cogent reason to depart from the ruling of the aforecited cases that the position of Legal Counsel or City Attorney is confidential in nature, for which loss of confidence is a valid ground for termination. Hence, the Court must rule that petitioner is not entitled to the backwages claimed. Moreover, having determined the legality of petitioner's termination from service as City Attorney, the Court must likewise hold that respondent City Auditor Miguel Penalosa, Jr. cannot be held liable for damages since his refusal to pass in audit petitioner's claim for backwages was pursuant to a lawful order made by the respondent Acting Commissioner on Audit.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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