

THE BOARD OF DIRECTORS OF THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE, PETITIONER, VS. DR. LUIS N. ALANDY AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-15391. October 31, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of Appeals, which affirms a decision of the Court of First Instance of Manila, declaring that Resolution No. 422 of the Board of Directors of the Philippine Charity Sweepstakes is void and illegal only with respect to the appointment of Getulio Ambrosio as assistant general manager of the Philippine Charity Sweepstakes, and holding that respondent herein Dr. Luis N. Alandy is legally entitled to the said position, and ordering payment to the latter of the difference in salary between P10,000 per annum, as fixed by said resolution, and P7,200 per annum actually paid to him, from the effective date of Resolution No. 422.

The salient facts are contained in the decision of the Court of First Instance, which are quoted in the decision of the Court of Appeals, as follows:

"Plaintiff Luis N. Alandy, claiming to be entitled to the position of Assistant General Manager of the Philippine Charity Sweepstakes Office, brought this action for quo warranto on July 21, 1956, against defendant Getulio Ambrosio as the person who allegedly has usurped or has unlawfully held or exercised the office of Assistant General Manager. As alleged in the complaint, defendant Eugenio E. Santos is being sued in his: capacity as General Manager of the Philippine Charity Sweepstakes Office and, as such, is the person from whom all orders with reference to said office now in question directly emanate; while the other defendants are sued in their capacity as Chairman and Members, respectively, of the Board of Directors, Philippine Charity Sweepstakes, and, as such, are the persons, together with defendant Eugenio E. Santos responsible for the appointment of defendant Getulio Ambrosio to, and the latter's subsequent occupancy of said position of Assistant General Manager.

"The Philippine Charity Sweepstakes Office is under the Office of the President of the Philippines. It is a "public corporation under the supervision of a Board of Directors composed of five members, appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chief of the Philippine Charity Sweepstakes Office, who is known as General Manager, his assistant and the necessary personnel are appointed and their salaries are fixed by the Board of Directors.

"On May 21, 1949, the plaintiff was appointed Assistant General Manager of the Philippine Charity Sweepstakes Office, with compensation at the rate of P7,200 per annum. The appointment of the plaintiff was approved by authority of the President of the Philippines and signed by the then Chairman of the Board of Directors of the Philippine Charity Sweepstakes Office and by the Chairman of the Control Committee. The plaintiff duly qualified, assumed charge of the office of Assistant General Manager and continued to discharge the duties thereof. The plaintiff, as such Assistant General Manager, was issued Policy No. 15029 on November 30, 1949, by the Government Service Insurance System, to mature on November 30, 1963. The said policy is still in force.

"According to the By-Laws of the Philippine Charity Sweepstakes 'the Assistant General Manager shall assist the General Manager in the performance of his duties, and during the absence of the General Manager for any cause, the Assistant General Manager shall perform all the duties of the General Manager, and such other acts and duties as the Board or the General Manager may, in the interest of the service, require him to perform from time to time*.

"On August 20, 1954, the Board of Directors passed Resolution No. 314, approving the Budget and Plantilla for the fiscal year 1954-1955 and the reorganization of the Sweepstakes Office. Said Resolution No. 314 states, in part, as follows: 'Several changes in the assignments of the personnel have been effected, among which is the conversion of the position of the Assistant General Manager to Field Supervisor and the abolition of the position of Treasurer. The position of Assistant General Manager has been changed to General Field Supervisor because of the need for a responsible official to conduct surveys in the interest of Sales Promotion'. The Board of Directors directed the Acting General Manager to issue an administrative order to carry out the reorganization provided in the Budget and Plantilla as approved by the Board. In compliance therewith, the Acting General Manager issued Administrative Order No. 2, dated September 2, 1954, reorganizing the Sweepstakes Office.

"Under the said Administrative Order No. 2, the plaintiff was given the designation of General Field Supervisor and defendant Getulio Ambrosio was designated Credit and Accounting Chief. Both positions, together with that of Sales Promotion Chief are grouped under the heading 'Technical Staff' of the Office of the General Manager.

"On September 16, 1954, the Acting General Manager directed the plaintiff to file not later than September 21, a Government Fidelity Bond in the amount of P10,000 for the position of General Field Supervisor. On September 28, 1954, the plaintiff applied under the Government Fidelity Fund for a bond as Acting General Field Supervisor in the service of the Philippine Charity Sweepstakes Office.

"On October 1, 1954, the plaintiff, as General Field Supervisor, asked the Board of Directors for an increase of gasoline allowance in view of his present designation.

"In the early part of November, 1954, the plaintiff filed with the Bureau of Civil Service an application for eligibility under Republic Act No. 1080. On November 15, 1954, the Deputy Commissioner of the Civil Service informed the plaintiff by means of a letter that it appearing that he met the 'requirements for physician (first grade) eligibility' under Act No. 1080, his said application was duly registered in the Bureau of Civil Service.

"On March 18, 1955, a formal appointment was made for the plaintiff as General Field Supervisor, with compensation at the rate of P7,200 per annum, effective July 1, 1954. It is a proposed appointment which the plaintiff has never received and accepted. Significantly, the appointment as prepared shows that the printed words 'Original, Probational, Permanent, Temporary, Transfer Promotion/ in parenthesis were deleted, and instead the words 'Designation with the same salary' were typewritten within the same parenthesis. In the same appointment appears the efficiency rating of the plaintiff, which is 88%. The said proposed appointment of the plaintiff was forwarded to, for consideration in, the Bureau of Civil Service.

"On July 25, 1955, the plaintiff as General Field Supervisor was directed to organize a branch office of the Philippine Charity Sweepstakes Office at San Pablo City and was designated Branch Manager thereof by the General Manager.

"On December 3, 1955, the Board of Directors passed Resolution No. 422, resolving among others 'to create the position of Assistant General Manager with a salary of P10,000 per annum and appoint Mr. Getulio Ambrosio to this position, in both cases effective upon assumption of duty'."

In arriving at its decision, the Court of Appeals reasoned as follows:

"It appears clear to us that the position of Assistant General Manager was not abolished but its name was merely changed to General Field Supervisor by said Resolution No. 314. If the intention was to abolish that position, the said resolution should have said so as in the case of the treasurer of the Corporation. Had the resolution only used the term "abolition" in connection with the position and then created the position of General Field " Supervisor, there would be no doubt as to the intention of the Board of Directors. But instead of "abolition" the term "conversion" was used. The reason for the "conversion" or change, as stated in the resolution was the need for a responsible official to conduct surveys in the interest of sales promotion. This conversion or change of name was not necessary because under the By-Laws of the Corporation, the Board or the General Manager may require the Assistant General Manager to perform such acts and duties as may be necessary "in the interest of the service". The real effect of the resolution, therefore, insofar as appellee is concerned, is that he was given the additional responsibility of personally conducting surveys with the end in view of increasing the sale of sweepstakes tickets. He was not divested of his regular functions as Assistant General Manager. Article V of the By-Laws provides, in part, as follows: "The Assistant General Manager shall assist the General Manager in the performance of his duties, and during the absence of the General Manager for any cause, the Assistant General Manager shall perform all the duties of the General Manager, and such other acts and duties as the Board or the General Manager may, in the interest of the service, require him to perform from time to time'.

"It follows that despite its expressed purpose to 'create' the position of Assistant General Manager, Resolution No. 422 adopted by the Board on December 3, 1955 did neither create nor recreate it but only restored its name and increased its salary from P7,200 to P10,000 per annum. What already exists need not be created. Since this resolution is silent as to 'General Field Supervisor' and appellee was not dropped from the service after its passage, the consequence, which was hidden but doubtless intended, was to provide a position with that name for appellee. In short, as a result of the adoption of the two resolutions in question appellee was ousted from his position of Assistant General Manager and given the newly created position of General Field Supervisor. Of course, the salary of the Assistant General Manager could be increased anytime, and Resolution No. 422 insofar as it raised the salary from P7,200 to P10,000, is perfectly valid. And it is believed that appellee does not need another appointment to entitle him to the increase because it should be presumed that the Board intended it for the occupant of the position whoever he may be. It cannot be pretended that the increase was approved for the exclusive benefit of respondent Getulio Ambrosio.

"In view of our conclusion that the position of Assistant General Manager was not abolished by Resolution No. 413 but merely given another name, there is no need of determining whether appellee accepted his appointment as General Field Supervisor and whether he is estopped from claiming the position of Assistant General Manager and contesting the appointment thereto of respondent Getulio Ambrosio. Likewise, there is no need to determine whether appellee is eligible or possesses the necessary qualifications for the position in question. This is so because his original appointment as Assistant General Manager made way back in 1949 has never been revoked and neither has he resigned or been removed from the position.

"The result would be the same if we consider the conversion of the position of Assistant General Manager into that of General Field Supervisor as equivalent or tantamount to the abolition of the former and the creation of the latter. Here, of course, we are confronted with the issues raised by appellants in which they maintain that appellee accepted the appointment as General Field Supervisor and assumed the duties thereof and therefore he is estopped from questioning the right of respondent Getulio Ambrosio to hold the position of Assistant General Manager.

"Appellants argue that appellee accepted the position of General Field Supervisor because he performed certain official acts as such, such as (1) the filing of an application for a government fidelity bond in which he placed in the blank space for the 'position for which bond is desired' the words 'Acting General Field Supervisor'; (2) requesting for his old gasoline allowance and signing the request as General Field Supervisor; and (3) applying for vacation and sick leaves of absence and signing the applications as General Field Supervisor. It is true that

appellee signed certain applications in his capacity as General Field Supervisor and performed certain duties purporting to pertain to that position. This does not necessarily mean, however, that he accepted and qualified for the position in the sense that he abandoned and vacated the position of Assistant General Manager. In the first place, he has not taken oath of office as General Field Supervisor and, in the second place, he has not received the formal appointment which until now has not yet been approved by the corresponding authorities and which was made only on March 18, 1955, in spite of the fact that the conversion of the position of Assistant General Manager into that of General Field Supervisor took place on August 20, 1954. In fact, he protested the appointment in a letter to the Commissioner of Civil Service on the ground that such appointment was a demotion from his position as Assistant General Manager. As the trial court very aptly observed, appellee 'had no choice but to continue the performance of the duties of the office with a different name but practically having the same functions. He had no ground to complain, because his position was not abolished and he was not ousted therefrom.' The fact is that he only obeyed the order of his superiors-the General Manager and the Board of Directors. He could have refused to carry out the ostensible purpose for which the conversion of his position was made without affecting adversely the effectiveness of the Corporation and rendering himself open to the charge of insubordination. There is evidence that he had incurred the displeasure of the then Chairman of the Board of Directors and that he had been harassed and inconvenienced to the extent of being humiliated. In short, it cannot be said that appellee accepted the position of General Field Supervisor voluntarily and clearly and consequently his case should be considered an exception to the general rule that when a public official accepts appointment to an office he will be considered to have abandoned the office he was occupying by virtue of a former appointment.

"Finally, it is claimed by appellants that appellee is not eligible to the position of Assistant General Manager because it is in the classified service and his Civil Service eligibility is only second grade. If that is the only objection, the proper thing for the Board of Directors to do was to submit the question to the President for determination whether the position should not be declared as policy-determining, primarily confidential or highly technical in nature. Had that been done, there would hardly be any doubt as to the result, because if the position of General Field Supervisor, upon the recommendation of the Commissioner of Civil Service, was placed in the unclassified service there seems to be no reason why the higher position of Assistant General Manager will not be placed also in the exempt class.

"When appellee was appointed as Assistant General Manager in 1949, no objection was raised and evidently he was considered then as qualified for the position. The appointment can no longer be assailed and if he is deprived of the position now, it would be violative of the constitutional provision that 'no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law' (Sec. 4, Art XL Constitution). This provision applies both to classified and unclassified civil service officials or employees without distinction (Lacson vs. Romero, 84 Phil., 740; 47 Off. Gaz., 1778; Santos vs. Mallari, et al., 87 Phil., 289; 48 Off. Gaz., 1787)."

The first error assigned in this appeal is as follows:

"The Court of Appeals erred in holding that Dr. Luis N. Alandy, respondent herein, may maintain the action for quo warranto, in his own name, under Section 6, Rule 68 of the Rules of Court and, for that reason, in not dismissing the case for lack of jurisdiction."

We find no merit in this assignment of error. In the first place, it does not appear to have been raised in the Court of Appeals; hence it may not be raised for the first time before us. In the second place, the Philippine Charity Sweepstakes is a corporation created by law (C.A. No. 301). The Rules of Court expressly provides that the action of quo warranto lies against a person who usurps, intrudes into or unlawfully holds or exercises a public office in a corporation created by authority of law (Sec. 1, Rule 68). The Rules also allow the person who claims to be entitled to a public office usurped by another to institute the action of quo warranto in his own name. (Sec. 6, Rule 68.)

Counsel for the petitioner invokes many principles obtaining in American law to the effect that the action of quo warranto can only be instituted against public corporations, where said corporations exercise a portion of the sovereign powers of the state. That rule does not apply in this jurisdiction where quo warranto is a special civil action. (Sec. 6, Rule 68.) Even in the United States the action of quo warranto lies to try a title to office in a private corporation.

"Quo warranto, proceedings ordinarily are a proper remedy to try title to office in a private corporation.—Except in some jurisdiction, quo warranto, or an information or action in the nature thereof, is a proper remedy to try title to office in a private corporation. In some jurisdictions, statutes expressly authorize quo warranto proceedings to try and determine title to an office in a corporation, but under such statutes the proceedings will not lie against persons who are not officers. Apart from statute, an office in a private corporation, created and chartered by the state, is deemed to be of a public character, or the public is deemed to have an interest thereon, in such a sense and to such an extent as to render the remedy available against a person who, not being lawfully entitled to do so, holds the office." (74 C.J.S., p. 192; *Italics ours.*) (p. 15, Brief for the respondents.)

The second and third assignments of error are as follows:

"The Court a quo erred in holding that the action for quo warranto having been commenced on July 21, 1956, it was instituted within one year after the cause of the ouster, or the right of the plaintiff to hold office, arose, when there can be no question that if there were any ouster at all, it occurred on August 20, 1954.

"The Court of Appeals erred in holding that Luis N. Alandy was ousted from the position of Assistant General Manager on December 3, 1955, when resolution No. 422 was adopted."

Neither do we find any merit in the above errors. It is argued that the cause of action of respondent Dr. Alandy arose when on August 20, 1954, the Board of Directors passed Resolution No. 314, converting the position of assistant general manager to general field supervisor, and not from December 3, 1955 when Resolution No. 422, creating the position of assistant general manager with compensation at P10,000 per annum and appointing Getulio Ambrosio to said position, was approved by the Board. The action of Dr. Alandy did not accrue in 1954, when actually no salary was appropriated for the position, of assistant general manager. No action could accrue in his favor at that time, first because there was no salary appropriated, secondly because there was nobody appointed to said position. The salary was appropriated only by Resolution No. 422. It was also by such resolution only that another person, Getulio Ambrosio, was appointed to the position of assistant general manager. It was only when an appointment was issued in favor of another person that the cause of action in favor of Dr. Alandy actually accrued. While no appointment was issued in favor of another, Alandy was not yet deprived of any right to the position.

The removal of Dr. Alandy from his position of assistant general manager was effected by Resolution No. 422; the previous Resolution No. 314, suppressing the salary of assistant general manager, did not do so. It was the second Resolution No. 422, reinstating the salary by increasing the amount, but appointing to said position Mr. Getulio Ambrosio, which deprived him of the position. As declared by the Court of Appeals the fact of removal was effected at different times and by different resolutions. But the two resolutions Nos. 314 and 422 can not hide or suppress the fact that what actually was done was to remove Dr. Alandy from his position of assistant general manager and to appoint somebody to his position.

The fourth assignment of error is as follows:

"The court a quo erred in not holding that, by his acceptance of his appointment as, and his assumption of the duties of, General Field Supervisor, respondent Alandy is estopped from claiming the position of Assistant General Manager and impugning the appointment of the late Getulio Ambrosio to the said position."

To support this assignment of error, claim is made that the various acts of Dr. Alandy, such as the filing by him of a fidelity bond in the amount of P10,000, his request for an increase of gasoline allowance and signing the request as general field supervisor, his applying for vacation and sick leaves of absence and his signing as general field supervisor, and his assumption and performance of the functions of the position of general field supervisor, estop him from claiming the position of assistant general manager. We do not agree to this argument. Estoppel requires that a person claimed to be estopped must have knowledge of the fact that his voluntary acts would deprive him of some rights because said voluntary acts are inconsistent with said rights.

"The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct "which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise, than, ' and inconsistent with those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual, or constructive, of the real facts * * *." (19 Am. Jur. pp. 642-643.)

Dr. Alandy assumed the duties of general field supervisor, because the resolution stated that his position was converted and that of assistant general manager did not have any salary and was actually suppressed from the budget. He did not know and neither was he made to understand that thenceforth he should no longer claim the position of assistant general manager should this be recreated. His reaction to the appointment of Ambrosio to the recreated position was to claim the position for himself. Had he allowed Ambrosio to continue in said position of assistant general manager for some unreasonable length of time and while he, at the same time, continued performing the duties of general field supervisor without any protest or objection, then it can be said that he would be deemed to have waived his right to the position of assistant general manager, or estopped to claim it. The fact is, however, that immediately after the approval of the resolution and within a reasonable time, he objected to the appointment of Getulio Ambrosio to the position and thereafter asserted his right thereto before the court. The resolution recreating the position of assistant general manager is dated December 8, 1955. Dr. Alandy, through his attorney, objected to such an act of the Board of June 9, 1956 and, thereafter, he continued fighting for it before the Commissioner of Civil Service, until he filed this action in the Court of First Instance on July 21, 1956. Certainly no waiver or estoppel of any kind can be inferred from these acts of Dr. Alandy.

Before proceeding to the other questions raised on the appeal, we call attention to the fact that an employee in the Civil Service may not be suspended or removed from his office, except in accordance with law. (Art. XII, Sec. 4, Constitution.) We have sustained in a series of cases that an employee can not be removed or suspended without proper proceedings and except for causes provided by law, and that he may not also be removed or transferred from his position against his consent, without such proceedings. It is enough to cite the following cases to show the attitude of this Court against transfers or removals of employees without cause or without their consent: *Paulino J. Garcia, et al., petitioners, vs. Panfilo Lejano, et al., respondents*, supra, p. 116; *Rodriguez vs. Del Rosario*, 93 Phil., 1070; 49 Off. Gaz., [12] 5427; *Gorospe vs. De Veyra*, 96 Phil., 545; 51 Off. Gaz., [2] 692; *Alzate vs. Mabutas*, 51 Off. Gaz., [5] 2452; *Santos vs. Mallare*, 87 Phil., 289; 48 Off. Gaz., [5], 1787; *Lacson vs. Romero*, 84 Phil., 740; 47 Off. Gaz., [4], 1778.

As we have stated above, the act of removal or transfer in this case may be said to have been performed surreptitiously, first by a suppression of the appropriation for the salary for the position of assistant general manager, second, the assignment of Dr. Alandy to the newly created position of general field supervisor, and third, the revival of the position of assistant general manager and the appointment thereto of Getulio Ambrosio. No amount of reasoning can make out of these acts anything but a removal of an employee from his position and the substitution of another in his place.

The fifth assignment of error reads as follows:

"The Court of Appeals erred in holding that respondent Luis N. Alandy does not need another appointment to entitle him to the increase in salary, provided for the position of Assistant General Manager, from P7,200.00 to P10,000.00 per annum pursuant to Resolution No. 422."

It is argued in support of this assignment of error that unless and until respondent Dr. Alandy is extended a new appointment promoting him to the new salary rate he is not entitled to the difference in salary between the new rate and the old one. We take judicial notice of the practice being followed in the Philippine Civil Service that an increase in the salary appropriated for a position does not actually accrue to the holder of the position until and unless said holder (of the position) has been given the increased salary. The case of respondent Dr. Alandy falls under this general rule or practice, especially as another person had been indicated to receive the new salary. An increase in an appropriation or salary should not automatically entitle the holder of the position to such increased salary; this increase may have possibly been effected because of the greater importance of responsibility attached or to be attached to the recreated position. But the fact that an employee holds that position, does not necessarily imply that he is fully entitled or qualified to receive the increased salary provided for. We, therefore, agree with the petitioner that respondent Dr. Alandy may not receive the increased salary of P10,000 until and unless expressly authorized to receive said promotion in salary.

The above considerations cover all the important questions raised in the appeal. Wherefore, with the modification above indicated, that respondent Dr. Alandy is not yet entitled to receive the increase in salary of P10,000, the judgment of the Court of Appeals is hereby affirmed, without costs.

Paras, C.J., Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

Judgment affirmed with modification.

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