

RODOLFO CACHUELA, IN HIS CAPACITY AS ACTING MAYOR OF CALINOG, ILOILO, PETITIONER AND APPELLANT, VS. NATALIO P. CASTILLO, IN HIS CAPACITY AS EXECUTIVE SECRETARY, ET AL., RICARDO ...

G.R. No. L-18316. August 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On July 15, 1960, petitioner Rodolfo Cachuela (then Vice-Mayor of Calinog, Iloilo) with five councilors of said municipality, filed with the Provincial Board of Iloilo a complaint charging respondent Ricardo Provideo (Mayor, at the time of the same municipality) with neglect of duty and maladministration. Acting on said complaint, Iloilo Provincial Governor Jose C. Zulueta, on July 20, issued an order suspending respondent Provideo from office, pending action by the board on said charges against him and, on the same date, reproduced said complaint to the board, pursuant to Section 2188 of the Revised Administrative Code.

Thereafter, respondent Provideo appeared before the board, and was investigated. On August 30, 1960, he was found guilty as charged, by the Vice-Governor and one board member. The two other board members voted for his exoneration. With the Governor concurring in the vote finding him guilty, the Provincial Board ordered his suspension from office for a period of two months effective upon receipt of the decision.

On September 8, 1960, respondent Provideo filed with the board a notice of appeal, manifesting his intention to appeal said decision to the Executive Secretary, in accordance with the provision of Section 2191 of the Revised Administrative Code, and praying that the records of the case be forwarded to said official. On September 16, the board forwarded the records of the case to the Executive Secretary.

On September 21, 1960, petitioner Cachuela filed with this Court a petition for prohibition with preliminary injunction (docketed as G. R. No. L-17470) against respondents, seeking to restrain respondent Executive Secretary from acting on the appeal of respondent Provideo, but we dismissed the same by resolution of September 26, "without prejudice to action, if any, in the court of first instance."

Thereafter, or on October 5, 1960, petitioner Cachuela filed with the Court of First Instance of Iloilo the present action for prohibition with preliminary injunction (Civil Case No. 5569) against respondents Executive Secretary and Provideo seeking to restrain respondent Executive Secretary from acting on the appeal of respondent Provideo.

On October 15, 1960, the court issued a writ of preliminary injunction enjoining respondent Executive Secretary from acting on respondent Provideo's appeal; pending final determination of the case on the merits. However, upon respondent's motion for reconsideration, the court issued an order dissolving the preliminary injunction.

After respondents have filed their answer to the petition, with a counterclaim for damages on the alleged ground that the administrative complaint was unfounded and frivolous, the case was tried.

On January 21, 1961, the court rendered judgment dismissing the petition for prohibition, as well as respondent Provido's counterclaim, with costs, whose pertinent portion read:

"The main issue raised by the petition is—that Section 2191 of the Revised Administrative Code is unconstitutional'. The petitioner argues that for the Executive Secretary to review, revise, revoke, modify or affirm the decision of the Provincial Board in this case, would be for it to exercise control over local governments and invoked, therefore, Section 10 (1) of Article VII of the Constitution—

"The President shall have control of all executive departments, bureaus and offices, exercise general supervision over all local governments as may be provided by law * * *.' (Italics supplied)

"Section 2191 of the Administrative Code reads:

'SEC. 2191. Action by Secretary of the Interior.—Upon receiving the papers in any such proceedings, the Secretary of the Interior shall review the case without unnecessary delay and shall make such order for the reinstatement, dismissal, suspension, or further suspension of the official, as the facts shall warrant and shall render his final decision upon the matter within thirty days after the date on which the case was received. Disciplinary suspension made upon order of the Secretary of the Interior shall be without pay. No final dismissal hereunder shall take effect until recommended by the Department Head and approved by the President of the Philippines.

* * * * *

"As appears in the constitutional prohibition 'The President shall have control of all executive departments, bureaus or offices, exercise supervision over all local governments as may be provided by law and take care that the laws be faithfully executed.' Under what provision of the law does the President exercise his supervision over all local governments? We see no other law that can be invoked to govern the action of the President in the exercise of his supervisory authority over local governments than Sections 2188 to 2191 of the Revised Administrative Code. In the present case, to bring the matter involving the decision of the Provincial Board to the Office of the President on appeal, is not unconstitutional, and this was recognized and upheld in the case of *Hebron vs. Reyes* (supra) [104 Phil., 175]. Indeed, it is, likewise, well-settled that laws Governing the suspension or removal of public officers, especially those chosen by the direct vote of the people, must be strictly construed in their favor.'

'Accordingly, when the procedure for the suspension of an officer is specified by law, the same must be deemed mandatory and adhered to strictly, in the absence of express or clear provision to the contrary—which does not exist with respect to municipal officers. What is more, the language of sections 2188 to 2191 of the Revised Administrative Code leaves no room for doubt that the law—in the words of Justice Tuason—frowns upon prolonged or indefinite suspension of local elective officials". (*Lacson vs. Roque*, 92 Phil., 456; 49 Off. Gaz. 93), (Italics supplied.)

"By the theory of the petitioner herein, he wants to make it clear and thus upholds that the decision of the Provincial Board cannot be appealed, on the ground that to do so would make the President exercise direct control over the actuations of the Provincial Board. The office of the President to exercise jurisdiction over the decision of the Provincial Board on appeal, would only be exercising its supervisory authority over the same. The appellate authority of the office of the President is best recognized in the very case of *Hebron vs. Reyes* (supra) * * *

"Regarding the counterclaim filed by the respondent Ricardo Provido, the Court has found that charges were filed against the said Ricardo Provido as Municipal Mayor of Calinog, Iloilo, for Neglect of Duty and Maladministration by the petitioner, Rodolfo Cachuela, Vice-Mayor and Felix Catoto, Luis Ortizo, Guillermo Castro, Jesus Carbon, and Ildelfonso Pasaporte, Municipal Councilors of Calinog, Iloilo. This same complaint is embodied in the administrative charges filed by the Provincial Governor of Iloilo, Hon. Jose C. Zulueta

(Annex A to the petition). * * *

"By virtue of said administrative case against the respondent Ricardo Provideo, the Provincial Board on August 30, 1960, after investigation, found the respondent Ricardo Provideo guilty as charged in the complaint, and ordered his suspension from office for a period of two (2) months effective upon receipt of the decision (Annex B).

"Under this set of facts, the Court finds that the counterclaim is unjustified. Private citizens, as well as public officials in a government like ours, where the authority of governing officials emanates from the governed, it is the duty of the citizens to bring to the attention of the corresponding authorities the abuses, the omissions, or maladministration committed by such officials. Complaints filed by them, therefore, in this connection against any misconduct in any public office are qualifiedly privileged and, as such, they cannot serve as basis for counterclaim against the complainants.

"FOR ALL THE THE FOREGOING, the petition for prohibition, as well as the counterclaim of the respondent Ricardo Provideo, are hereby dismissed with costs against the petitioners.

"SO ORDERED."

Dissatisfied with said decision, petitioner Cachuela appealed to us. Respondent Provideo also appealed from that portion of the decision dismissing his counterclaim against petitioner Cachuela.

As heretofore stated, the present action is for prohibition, seeking to restrain the respondent Executive Secretary from acting on the appeal of respondent Provideo on the alleged ground that Section 2191 of the Revised Administrative Code authorizing such an appeal is unconstitutional insofar as it empowers the President to review the decision of the Provincial Board because such power of review, which includes the power to correct, alter, modify, revise, or annul amounts to an exercise by the President, of "control" over local governments forbidden by the Constitution. It appears, however, from the records of this case that the Executive Secretary, upon being advised of the dissolution of the preliminary injunction by the lower court acted on the appeal and, rendered on November 23, 1960 a decision exonerating the respondent Provideo from the charges of negligence of duty and maladministration. It, likewise, appears that the suspension imposed by the Provincial Board was for a period of two months effective upon receipt by the respondent Provideo of such a decision. Provideo was notified of the order of suspension on September 6, 1960 and the two-month period of suspension expired on November 6, 1960. Under the circumstances, as the act sought to be enjoined in this prohibition proceedings has already been performed and there is nothing more to restrain, the case has become academic and moot. And since the question of the unconstitutionality of the statute involved is not so clear and its resolution not so peremptorily necessary under the present facts of the case, this Court, pursuant to prevailing jurisprudence on the matter, should now decline to pass judgment on the controversy which, for practical purposes, has become abstract or non-existent.

The appeal of the respondent Provideo against the decision of the lower court dismissing his counter-claim for damages predicated on the claim that the administrative complaint was unfounded and frivolous, is without merit. We agree with the lower court that the administrative complaint is a qualified privileged communication and since the lower court found no evidence of malice or bad faith on the part of petitioner Cachuela, the dismissal of the counter-claim is justified.

In view of the foregoing, the appeal of petitioner Rodolfo Cachuela is hereby dismissed as presenting an already moot question, and the decision of the lower court dismissing the counterclaim of respondent Provideo is hereby affirmed. No costs. So ordered.

Bengzon, C. J., Padilla,, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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