

**VALENTINA TABAY (ASSISTED BY HER HUSBAND GERVACIO TABAY)
JOSEFA A. BOHOL (ASSISTED BY HER HUSBAND ANTONIO BOHOL),
ULDARICO MATILDO, REMIGIO BACUS AND VIRGILIO MIÑOZA,
PETITIONER...**

G.R. No. L-47472. July 24, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petitioners Valentina Taboy (assisted by her husband Gervacio Taboy), Josefa Bohol (assisted by her husband Antonio Bohol), Uldarico Matildo, Remigio Bacus and Virgilio Miñoza have appealed the decision of the Court of Appeals in CA-G.R. No. 03536 SP, promulgated on September 27, 1977, which affirmed the decision of the Court of First Instance of Cebu dismissing for lack of cause of action their petition for mandamus with damages against the following respondents: The Province of Cebu, the Sangguniang Panlalawigan of Cebu, the Provincial Treasurer of Cebu, the Provincial Auditor of Cebu, Rene Espina, Pablo Garcia, Reynaldo Mendiola, Valeriano Carillo and Osmundo Rama.

Valentina Taboy, Josefa Bohol, Uldarico Matildo, Remigio Bacus and Virgilio Miñoza were appointed as laborer-helpers at various dates in 1965 by then provincial governor of Cebu, Rene Espina. As such they belonged to the non-competitive or unclassified civil service. Their appointments, all effective July 1, 1965, were attested by the Civil Service Commission. Their appointments, however, were not submitted to the Provincial Board of Cebu for approval as required by Sec. 2081 of the Revised Administrative Code, the pertinent portion of which reads as follows:

x x x Provided, That appointments to all positions in the provincial service which under existing laws are in the unclassified civil service and of temporary employees in classified civil service positions made in the absence of eligibles, shall be submitted to the Provincial Board for approval."

In 1967 the attention of Governor Espina was called to the necessity of complying with the provisions of the Revised Administrative Code above-quoted. Accordingly, in January, 1968, he submitted his appointments to the Provincial Board but said board on January 19, 1968, disapproved most of them including those of the petitioners. Hence, they worked only up to January 31, 1968.

Petitioners claim that they have acquired a permanent status because of the attestation of their appointments by the Civil Service Commission and length of service, and that they were removed because they were type "O" or Osmeñistas whereas the newly elected officials who took office in January, 1968, were political enemies. Accordingly, they filed a petition in the Court of First Instance of Cebu to compel their reinstatement and payment of their back salaries or damages for those who are no longer interested in reinstatement. Both the trial court and the Court of Appeals dismissed their petition as aforesaid.

The only question in this case is whether or not petitioners are clearly entitled to the remedy of mandamus. The

answer is in the negative.

There is no evidence to show that the petitioners were removed from their positions because they were Osmenistas. And the fact is that the Provincial Board of Cebu disapproved their appointments pursuant to the power granted to it by law. Hence, their appointments ceased to have effect, if at all, and their services were properly terminated. It matters not that the appointments of the petitioners had been attested by the Commissioner of Civil Service and that they had served for several years because the appointments having been made without the approval of the Provincial Board of Cebu, they were not valid appointments. (See *Valdez vs. Gutierrez*, No. L-25819, May 22, 1968, 23 SCRA 661.)

Mandamus requires a showing of clear and certain right; it never issues in doubtful cases. (*Valdez vs. Gutierrez*, supra.) Petitioners have not shown that they are indubitably entitled to the remedy of mandamus.

WHEREFORE, the decision appealed from is hereby affirmed. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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