

ALFREDO BALQUIDRA, PETITIONER, VS. COURT OF FIRST INSTANCE OF CAPIZ, BRANCH II, THE INCUMBENT PROVINCIAL GOVERNOR OF CAPIZ, CORNELIO VILLAREAL, JR. AND THE PROVINCE OF CAPIZ, RE...

G.R. No. L-40490. October 28, 1977

Ponente: GUERRERO, J.

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GUERRERO, J.:

We set aside the Resolution of the Court of First Instance of Capiz, Branch II, amending its decision in Civil Case No. V-2709 entitled "Alfredo Balquidra v. Filomeno S. Villanueva, et al." rendered on February 1, 1974, which decision ordered the present respondent Provincial Governor Cornelio Villareal, Jr. to reinstate the petitioner and the Province of Capiz to pay his back salaries, whereas the challenged Resolution dated July 15, 1974 and filed with the Clerk of Court on July 17, 1974, while maintaining the order for reinstatement eliminated the payment of back salaries.

The facts are stated in the appealed decision.

"On August 28, 1963, a petition for mandamus with damages was instituted in this Court by plaintiff Alfredo Balquidra against Filomeno S. Villanueva, Rodrigo V. Amistoso and Edilberto Villanueva, to compel said respondent Governor of Capiz and the respondent Provincial Treasurer, to reinstate petitioner to the position of watchman, to pay petitioner's back salary as well as damages. Respondents in due time filed their common answer with motion to dismiss. Thereafter, the parties through their respective counsels submitted to this Court a stipulation of facts which is hereunder reproduced:

"1. That on June 17, 1961, the petitioner, Alfredo Balquidra, was appointed watchman in the Office of the Provincial Treasurer of Capiz, with compensation at the rate of ONE THOUSAND FOUR HUNDRED FORTY PESOS (P1,440.00) per annum, vice Jose Adrias, deceased, effective upon assumption of duty, by the then Governor Atila Balmes, which appointment is hereto attached as Annex "A" and made an integral part hereof;

"2. That copies of said appointment were furnished the Commissioner of Civil Service, Manila, the Provincial Treasurer and Provincial Auditor of Capiz, both of Roxas City;

"3. That the appointment (Annex A) of petitioner bears on its face the following inscription: 'NOTED: under paragraph 1, Sec. 5 of Rep. Act 2260, subject to the usual physical and medical examination, by A. Del Rosario, Commissioner of Civil Service, by: (Sgd.) L. C. Hipolito, Supervising Personnel Transaction Examiner';

"4. That one (1) week after his appointment on June 17, 1960, or on June 24, 1960, petitioner took his oath of office as such Watchman in the Office of the Provincial Treasurer before the then Governor Atila Balmes, which Oath of Office is hereto attached as Annex "B" and made an integral part hereof;

"5. That immediately thereafter, petitioner entered into and discharged the duties of his office continuously

until his services were later terminated;

"6. That on August 31, 1962, without advance notice, nor any formal charge, either administrative, criminal or civil, respondent Provincial Governor and respondent Provincial Treasurer terminated the services of the petitioner as such watchman, respondents alleging that the termination was 'for the convenience of the government,' as evidenced by the letter of the respondent Provincial Governor to the respondent Provincial Treasurer dated August 31, 1962, and the letter of respondent Provincial Treasurer to the petitioner dated August 31, 1962, which letters are hereto attached as Annexes "C" and "D", respectively and made integral parts hereof;

"7. That since his dismissal from the government service as such watchman .cm August 31, 1962, petitioner has not received nor collected any terminal leave pay nor did he obtain any clearance of any accountability;

"8. That respondent Edilberto Villanueva was immediately appointed to, and is presently occupying the position of Watchman in the Office of the Provincial Treasurer of CapiZ, vice the petitioner, by the other respondents, who are the incumbent Provincial Governor and Provincial Treasurer of CapiZ, respectively;

"During the course of the trial, however, respondent Governor Filomeno Villanueva died on April 30, 1965 and Governor Cornelio L. Villareal, Jr. assumed office as Governor while respondent Rodrigo V. Amistoso was transferred to Iloilo City and in his place Provincial Treasurer Tito Montano assumed office as Provincial Treasurer of CapiZ. With the Motion to Continue Action against the New Officials, petitioner filed a supplemental petition substituting the incumbent Governor Cornelio L. Villareal, Jr. for Filomeno S. Villanueva, deceased and Tito Montano for Rodrigo Amistoso."

"At the trial of this case, petitioner adduced evidence to support his petition while the respondents waived their right to present their evidence and the case was submitted for decision on the basis of the evidence adduced by the petitioner." (Rollo, pp. 17-20)

Upon the facts stipulated by the parties and other additional evidence presented during the trial, the lower court made the following additional findings of fact:

"..... that the position of petitioner as watchman is a provincial plantilla position created by the Provincial Board of CapiZ, and approved by the Department of Finance, with the following duties: to watch the provincial capitol building and the properties kept therein (testimony of Juan D. Ta-ala, Acting Provincial Treasurer of CapiZ); that petitioner is a member of the Government Service Insurance System or GSIS with an ID card, and that in connection with his appointment, petitioner submitted himself to physical examination which he passed; that as a member of the GSIS, petitioner was insured with the GSIS with Insurance Policy No. 698193 and he pays premium one-half (1/2) of which is paid by him while the other half is paid by the government, based on a compulsory insurance coverage which is extended only to permanent employees; that he was able to secure a policy and a salary loan from the GSIS; that petitioner is not a civil service eligible."

(Rollo, pp. 21-22)

On February 1, 1974, the respondent Court of First Instance rendered a decision dated January 28, 1974 declaring that petitioner Balquidra holds a permanent appointment; that his dismissal is illegal; that the claim for moral damages is untenable; that "while the Provincial Government of CapiZ is not by name included as party respondent, it cannot be denied that it is deemed included as party respondent "because respondent Governor and Provincial Treasurer are charged in their official capacity as officials of the Provincial Government of CapiZ. Consequently, the Provincial Government will shoulder the responsibility for the payment of the sums herein adjudged." The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the respondent Provincial Governor to reinstate the herein petitioner to the position of watchman in the Office of the Provincial Treasurer;
2. Ordering the Provincial Governor and Provincial Treasurer to pay petitioner back salaries from August 31, 1962, the date of his dismissal, to the date he is reinstated at P1,440.00 per annum; Provided, that in the event the petitioner elects not to be reinstated, his back salary shall be computed up to the time this judgment becomes final;
3. Ordering the respondents to pay petitioner Eight Hundred Pesos (P 800.00) by way of attorney's fees.

Costs against the respondents.

SO ORDERED."

(Rollo, pp. 26-27)

On February 4, 1974, respondents' counsel received. notice of the adverse decision and on February 15, 1974 filed a Motion for Reconsideration which was amplified by a Supplemental Motion for Reconsideration filed on March 4, 1974 alleging the following grounds:

"(a) That the respondent Provincial Governor cannot be compelled to reinstate the petitioner due to a memorandum-circular of the Civil Service Commission;

(b) That the decision ordering the Province of Capiz and/or respondents' Provincial Governor and Provincial Treasurer to pay the back salaries of the petitioner is contrary to law and applicable jurisprudence;

(c) That neither the Province of Capiz and/ or the Provincial Governor or Provincial Treasurer are liable for Attorney's fees of P800.00."

(Rollo, pp. 29, 36)

By order dated June 20, 1974 the respondent Court of First Instance denied the said Motion for Reconsideration, and notice of the order of denial was received by the respondents' counsel on June 25, 1974. Hence, on July 2, 1974, the respondents again filed a Second Motion for Reconsideration "on the ground that the decision on the instant case dated January 28, 1974 ordering the Province of Capiz to shoulder the responsibility for the payment of wages covering the back salaries of the petitioner from August 31, 1962, the date of his dismissal, to the date he is reinstated at P1,440.00 per annum is contrary to law and cannot be made enforceable against the Province of Capiz."

On the ground that the Second Motion for Reconsideration filed by the respondents is a pro-forma motion and thus could not have suspended the running of the period within which to appeal, petitioner filed a Motion for Execution of the original decision alleging that by mere lapse of time the said decision had become final and executory on July 16, 1974.

On July 17, 1974, the respondent Court of First Instance filed with the Clerk of Court a Resolution Amending Decision dated July 15, 1974 acting favorably on the Second Motion for Reconsideration filed by the respondents. Thus, the respondent Court absolved the Province of Capiz from the payment of petitioner's back salaries and damages on the ground that the Province of Capiz was not expressly impleaded as a party respondent in said case, and declared:

"WHEREFORE, the dispositive portion of the decision of this Court is hereby amended to read as follows:

WHEREFORE, judgment is hereby rendered ordering the respondent Provincial Governor of Capiz to reinstate the herein petitioner to the position of watchman in the Office of the Provincial Treasurer. No costs.

SO ORDERED."

By order dated December 3, 1974 the respondent Court denied both the petitioner's Motion for, Execution of the original decision and the Motion for Reconsideration of the Resolution Amending Decision; hence, this present recourse on the following assignment of errors:

I. The lower court erred in not holding in its resolution amending decision dated July 15, 1974 that petitioner Alfredo Balquidra is entitled to payment, jointly and solidarily by the Provincial Governor, Provincial Treasurer, and the Province of Capiz, of back salaries, damages, and attorney's fees as a result of his arbitrary dismissal from service as watchman in the Office of the Provincial Treasurer, Capiz, while at the same time ruling on the illegality of the dismissal and ordering the reins-tatement of the Petitioner.

II. The lower court erred in holding in its resolution amending decision dated July 15, 1974 that the province of Capiz cannot be held liable for payment of petitioner's back salaries, damages, and attorney's fees since the Provincial Board was not included in the suit, although the Provincial Governor and Provincial Treasurer were sued in their official capacities, and in the prayer of the Supplemental Petition of petitioner payment of back salaries and damages and attorney's fees were asked expressly against the province of Capiz jointly and solidarily with provincial officials concerned, and although it could not be pretended that the province of Capiz was adequately defended and had had its day in court.

III. The lower court erred in not holding that its decision dated January 28, 1974 became final and executory on July 16, 1974 because the second motion for reconsideration filed by respondent provincial Governor on July 2, 1974 being pro-forma, did not stop the running of the period to appeal.

Consequently, the lower court erred also in rendering the resolution amending decision dated July 15, 1974, by filing it with the clerk of court on July 17, 1974 without jurisdiction anymore since its original decision dated January 28, 1974 had already become final.

As a further consequence, the lower court erred in denying petitioner's motion for execution filed on July 17, 1974.

IV. The lower court erred in not awarding petitioner moral and exemplary damages and increased attorney's fees.

We hold that the first assigned error is well-taken. The respondent Court, in its Resolution Amending Decision, erred in reversing itself by ordering the reinstatement of the petitioner without, however, awarding him back salaries. It is undisputed that petitioner is not a civil service eligible, but this is no legal ground to dismiss him at anytime, without prior notice or formal charge. The position of watchman falls under the unclassified service, as shown in the notation of the Civil Service Commissioner below petitioner's appointment papers: "Noted: Under par. 1, Section 5 of R. A. 2260, subject to the usual physical and medical examination." (Par. 1, Sec. 5 of said Act speaks of the non-competitive service.) Therefore, the issue of whether or not the petitioner, belonging to the unclassified service, is protected by the security of tenure clause provided in the Constitution and the Civil Service Law, must be answered in the affirmative. The lack of civil service eligibility of an appointee to an unclassified position does not remove him from the operation and protection of the Civil Service Law. As pronounced by the Court in the case of *Lacson v. Romero*, 47 O.G. 1778, Art. XII of the Constitution (1935) contemplates the entire Civil Service, regardless of whether the employee embraced therein belongs to the classified or unclassified service. Officers and employees in the unclassified service like those occupying classified positions are protected by the aforementioned provision of the organic law.[1] This salutary rule has been reiterated in a more recent case, *Barbero v. Paraguya*,[2] wherein this Court declared,

"Employees in the civil service, regardless of their status are entitled to security of tenure of office."

Therewith, petitioner cannot be removed or dismissed with-out just cause, much less, without formal charge or prior notice. Based on the stipulated facts and applicable law, the original decision of respondent Court correctly ruled that petitioner's dismissal is illegal and that he is entitled to reinstatement with back salaries.

The second assigned error is also meritorious. Having affirmed the illegality of petitioner's dismissal, We see no reason why the Province of Capiz could not be held liable for the payment of petitioner's back salaries.

Firstly, petitioner's dismissal was admittedly "for the convenience of the Government." In Other words, it was the Province of Capiz which benefited in the termination of petitioner's services. Whatever personal motives the original respondent officials had in dismissing him are not shown in the whole record of the case; thus, We cannot pass upon them. We note the contention of the respondents, citing previous rulings, that illegal dismissals should be made the personal liability of the erring official, the rationale behind of which is,

"There are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts." (Nemanzo v. Sabillano, L-20977, September 7, 1968)

However, We cannot apply the doctrine in this instant case for the reason that the respondents have failed to show evidence that petitioner's dismissal was for causes directly imputable to the personal caprice of respondent Governor Villanueva, or respondent Treasurer Amistoso. The record stands that the dismissal was "for the convenience of the government" and We cannot speculate otherwise.

Secondly, the respondent Court in its Resolution Amending Decision, erred in reversing itself by holding that "because the Provincial Board has not been impleaded as respondent the decision insofar as it orders the Province of Capiz to pay back salaries of petitioner is a violation of the due process clause of the Constitution," the Province of Capiz was deprived of its day in court, not having been impleaded as party litigant, either in its corporate capacity or through the Provincial Board and the Provincial Auditor. The non-inclusion of the Provincial Board or the Provincial Auditor in the present case is of no importance. Such non-inclusion is no basis to declare that the Province was not heard, nor had no opportunity to defend itself. That the Provincial Government can act only through its officials, either thru its Provincial Executive alone, or thru the Provincial Board, or thru other officials exercising discretion, cannot be disputed. The record of the case shows that the complaint was directed against the respondent officials not in their personal but official capacities, the illegal act complained of being done in the course of official function. Furthermore, the respondents were represented by the Provincial Attorney, whose arguments against the liability of the said respondents as well as that of the Province of Capiz are well researched and ably presented. These facts alone belie the contention that the Province of Capiz was not afforded its day in court.

This Court has declared in *Albert v. University Publishing Co., Inc.*, 14 SCRA 285 that "since the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held liable as a party." Restating the position of this Court in *Gonzales v. Osmeña*,^[3] the ends of justice and equity would be served best if the inclusion of the Province of Capiz, as one of the respondents were considered a mere formality and deemed effected, as if a formal amendment of the pleading had been made in the proceedings below. Moreover, whatever objections respondents have raised in their Brief concerning the non-inclusion of the respondent Province of Capiz and its -provincial officials have become moot and academic by the Resolution of this Court dated August 20, 1975 "(a) to require the petitioner to implead in an amended petition as additional respondents the Provincial Board, the Provincial Treasurer and Provincial Auditor, all of the Province of Capiz, and to furnish copies thereof to the new respondents," in accordance with which the Amended Petition was filed on September 20, 1975

impleading the Provincial Board, the Provincial Treasurer and the Provincial Auditor, all of the Province of Capiz. (Rollo, pp. 98-110)

Apropos the third assigned error relative to the alleged lack of jurisdiction to amend its decision rendered on February 1, 1974 on the ground that said decision has become final and executory, considering that the Second Motion for Reconsideration is pro-forma and thus could not have suspended the running of the period within which to appeal which has lapsed in due time, We hold that the said assigned error is impressed with merit.

The record shows that the Supplementary Motion for Reconsideration filed by the respondents pointed out, among others, the following ground: "(b) That the decision ordering the Province of Capiz and/or the respondents Provincial Governor and Provincial Treasurer to pay the back salaries of the petitioner is contrary to law and applicable jurisprudence." (Rollo, p. 29)

On the other hand, the Second Motion for Reconsideration dated June 28, 1974 is based "on the ground that the decision on the instant case dated June 28, 1974 ordering the Province of Capiz to shoulder the responsibility of the payment of the sums covering the back salaries of the petitioner from, August 31, 1962, the date of his dismissal, to the date that he is reinstated at '1,440.00 per annum is contrary to law and cannot be made enforceable against the Province of Capiz." (Rollo, p. 39). In support of this ground, the respondents submit the argument that the Province of Capiz, the Provincial Board; and the Provincial Auditor were not included as party respondents in the case. Insofar as the Province of Capiz is concerned, this argument had already been raised in the Supplementary Motion for Reconsideration as adverted to above. In mentioning the Provincial Board and the Provincial Auditor, respondents did not raise an additional ground for the addition is merely an amplification of or an additional argument supporting the same ground that the decision is contrary to law and the applicable jurisprudence. In fact, the respondents have treated these allegations as mere arguments to support the said ground. They are but different approaches in their attack to one legal issue. The fact that the argument set forth in the Second Motion for Reconsideration is different in phraseology from the argument in the first motion cannot traverse the conclusion that the second motion is pro-forma where such argument was available and could have been known in support of a ground already existing, available and extensively discussed in the first motion.[4] Such succeeding motion should not interrupt any procedural period fixed by the Rules of Court. The reason is that by requiring litigants and counsel to be exhaustive in their motions and pleadings and avoid repetitiousness, courts may eventually reduce unnecessary delays that are the curse of judicial litigation since time immemorial.[5]

From the receipt of notice of the adverse decision by the respondents on February 4, 1974 to the time they filed the first motion for reconsideration on February 15, 1974, ten (10) days of the 30-day appeal period had lapsed. The notice of the order of denial was received by respondents' counsel on June 25, 1974 and from this date started the running of the remaining 20 days, which is computed in accordance with Rule 28, Revised Rules of Court, by excluding the day of receipt and including the twentieth day. Thus by mathematical process, the last day of the remaining period to appeal available to the respondents fell on July 15, 1974 because the second motion for reconsideration filed on July 2, 1974, being pro-forma, did not have the effect of suspending the running of the period within which to appeal.[6]

Since the Resolution Amending Decision is dated July 15, 1974 but it was only filed with the Clerk of Court on July 17, 1974, it is clear that the Resolution Amending Decision was filed two (2) days past the 30-days period to appeal thereby rendering the original decision final and executory, no appeal having been interposed within the period. As a consequence, the respondent court lost all jurisdiction to make substantial amendments to the same, and it had no alternative but to order the execution of the final judgment as prayed for by the winning party, the petitioner herein.

Respondents cite a rule that "Where a judgment is amended, the date of the amendment should be considered as the date of the decision for the computation of the period for perfecting the appeal therefrom." (Board of Liquidators v. Ricma Trading Corporation, 29 SCRA 397) Under this rule, "date of the amendment" refers to the date of the rendition of the amended decision. As correctly contended by the petitioner, it is the filing of the signed decision, with the Clerk of Court that constitutes the rendition of a judgment. It cannot be construed otherwise because it is basic that an amended decision is a distinct and separate judgment and this being so, it must follow the established procedural rule embodied in Section 1, Rule 36 of the Rules of Court, to wit:

"Sec. 1. All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." (Underscoring ours)

Anent the last assigned error, We hold that petitioner is not entitled to moral damages, malice and bad faith not having been shown. In accordance with Our ruling in Cristobal v. Melchor, G. R. No. L-43203, July 29, 1977, We grant back salaries to the petitioner at the rate last received by him which is '1,440.00 per annum, for a period of five years without qualification and deduction.

IN VIEW OF THE FOREGOING, the Resolution Amending Decision promulgated by respondent court on February 1, 1974 is hereby reversed and another one entered, ordering the respondent Provincial Governor to reinstate the petitioner, subject to age, medical and physical requirements to his former position as watchman in the Office of the Provincial Treasurer, directing the Provincial Board (now called the Sangguniang Panlalawigan) to appropriate the necessary amounts adjudged herein, and the Provincial Treasurer and Provincial Auditor to pay petitioner back salaries from August 31, 1962 up to and for a period of five (5) years computed at the original salary of 01,440.00 per annum without pronouncement as to costs.

Petition granted.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Martin, and Fernandez, JJ., concur.
Makasiar, J., reserves his vote.

[1] Arcel v. Sergio Osmeña, Jr., 1 SCRA 581.

[2] 58 SCRA 603.

[3] 3 SCRA 841.

[4] Rule 37, Sec. 4, R.C. Ysip, 81 Phil. 218 (1948); Medran v. CA, 46 O.G. 4277, 1350, March 26, 1969; Hill v. Chunaco, 48 O.G. 614, October 23, 1950; Phil. Airlines Inc. v. Arca, 19 SCRA 300).

[5] Phil. Airlines Inc. v. Arca, supra.

[6] Lonario v. De Guzman, 21 SCRA 349; Dacanay v. Alvendia, 30 SCRA 31.

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