

MARCELINO A. BUSACAY, PLAINTIFF AND APPELLANT, VS. ANTONIO F. BUENAVENTURA, IN HIS CAPACITY AS PROVINCIAL TREASURER OF PANGASINAN, OR HIS SUCCESSOR IN OFFICE, AND ALFREDO MURAO,...

G.R. No. L-5856. September 23, 1953

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan dismissing, for lack of merit, an application for mandamus and quo warranto with a demand for back pay and/or damages.

The cause was submitted upon the pleadings and an agreed statement of facts, the relative portions of which are condensed below.

The plaintiff was a duly appointed and qualified pre-war toll collector in the office of the provincial treasurer of Pangasinan with station at the Bued toll bridge in Sison, Pangasinan. His appointment was classified by the Commissioner of Civil Service as permanent. On October 18, 1945, after liberation, he was reappointed to that position with compensation at the rate of P720 per annum. On March 21, 1946, he resigned but on April 16 he was reappointed, and had continuously served up to November of 1947, when the bridge was destroyed by flood, by reason of which, he and two other toll collectors were laid off. Previously, from July 17 to September 10, 1946, the bridge had been temporarily closed to traffic due to minor repairs and during that period he and his fellow toll collectors had not been paid salaries because they had not rendered any service, but upon the reopening of the bridge to traffic after the repairs, he and his companions resumed work without new appointments and continued working until the bridge was washed away by flood in 1947.

When the bridge was reconstructed and reopened to traffic about the end of November, 1950 the plaintiff notified the respondent Provincial Treasurer of his intention and readiness to resume his duties as toll collector but said respondent refused to reinstate or reappoint him. Respondent Alfredo Murao, also a civil service eligible, was appointed instead of him in February, 1951, and has been discharging the duties of the position ever since. The position now carries a salary of P1,440 a year.

The Bued toll bridge is a portion of a national road and is a national toll bridge under Act No. 3932. The salaries of toll collectors thereon are paid from toll collections. In 1948, 1949 and 1950, no appropriation was set aside for these salaries, when the bridge was being rehabilitated. On September 15, 1950, the board on toll bridges approved the Bued river bridge as a toll bridge, authorized the collection of fees thereon, and prescribed corresponding rules and regulation.

Main ground for denial of the petition by the lower court is that the position in dispute is temporary and its functions transitory and precarious. The Solicitor General in this instance simplifies the issue by confining the point of discussion to whether or not by the total destruction of the bridge in 1947 the position of toll collectors

provided therefor were abolished. He opines that they were.

We agree with the Solicitor General's approach of the case but are constrained to disagree with his conclusions. To consider an office abolished there must have been an intention to do away with it wholly and permanently, as the word "abolish" denote. Here there was never any thought, avowed or apparent, of not rebuilding the aforementioned bridge. Rather the contrary was taken for granted, so indispensable was that bridge to span vital highways in northern Luzon and to Baguio.

This being so, the collapse of said bridge did not, in our opinion, work to destroy but only to suspend the plaintiff's position, and that upon the bridge's rehabilitation and its reoperation as a toll bridge, his right to the position was similarly and automatically restored.

This position is temporary, transitory or precarious only in the sense that its life is co-extensive with that of the bridge as a toll bridge. For that matter, all offices created by statute are more or less temporary, transitory or precarious in that they are subject to the power of the legislature to abolish them. But this is not saying that the rights of the incumbents of such positions may be impaired while the offices exist, except for cause.

The fact that the destruction of the bridge in question was total, and not partial as in 1945, the length of time it took to reconstruct it, and the hypothetical supposition that the new structure could have been built across another part of the river, are mere matters of detail and do not alter the proposition that the positions of toll collector were not eliminated. We believe that the cases of pre-war officers and employees whose employments were not considered forfeited notwithstanding the Japanese invasion and occupation of the Philippines and who were allowed to reoccupy them after liberation without the formality of new appointments are pertinent authority for the views here expressed. Some of such cases came up before this court and we specially refer to *Abaya vs. Alvear*, 82 Phil., 103; *Garces vs. Bello*, 80 Phil., 153, and *Tavora vs. Gaviña et al.*, 79 Phil., 421.

Our judgment then is that the appellant should be reinstated to the position he held before the destruction of the Bued river bridge.

The claim for back salary and/or damages may not be granted, however. Without deciding the merit of this claim, it is our opinion that the respondent Provincial Treasurer is not personally liable therefor nor is he authorized to pay it out of public funds without proper authorization by the Provincial Board, which is not a party to the suit.

The decision of the trial court is reversed in so far as it denies the petitioner's reinstatement, which is hereby decreed, and affirmed with respect to the suit for back salary and damages, without special findings as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

RESOLUTION

December 29, 1953

TUASON, J.:

In his motion for reconsideration appellant asks that the court positively declare that he is entitled to the payment of back salaries in order that he "may take the necessary administrative remedy" for their collection.

It is a universal principle that judgments must be responsive to the issues presented by the pleadings. (49 C. J. S., 117.) As there can be no issues between plaintiff or defendant and a stranger to the case, no judgment can be rendered for or against one who has not been impleaded. (41 C. J. S. 68.) In fact, not only is there no issue

between plaintiff or defendant and a person not a party to an action, but the court has absolutely no jurisdiction of his person.

The objection would not disappear if the declaration here sought were to be used merely to persuade the proper authorities to pay the appellant his claim. It is also an unvarying rule of courts to refrain from making any adjudication the enforcement of which would be left to the discretion or will of the debtor, or any pronouncement which would affect the rights of parties who have not had their day in court. Any declaration holding any officials of the Government liable for the payment of appellant's salary for the time he was kept out of the position of toll collector would be unfair as prejudging any suit that might be brought against them in case they refuse.

The prayer that, in the alternative, "The defendant Provincial Treasurer be condemned to pay from his own private funds as exemplary damages to the plaintiff" the appellant's salary "during the period of the latter's legal suspension or dismissal" was amply discussed in our decision. We find no reason for altering our conclusion that the Provincial Treasurer cannot be held liable. There is no proof that he acted in bad faith, as charged.

Wherefore, the motion for reconsideration is denied.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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