

**THE HON. EXPEDITO B. PILAR, IN HIS CAPACITY AS VICE-MAYOR
AND CONCURRENTLY PRESIDING OFFICER PROTEMPORE OF THE
SANGGUNIANG BAYAN OF DASOL, PANGASINAN, PETITIONER, VS.
THE SANGGU...**

G.R. No. 63216. March 12, 1948

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an original action for mandamus to compel the Sangguniang Bayan and the municipal treasurer to pay the salary due petitioner Hon. Expedite B. Pilar, in his capacity as the Vice Mayor of Dasol, Pangasinan, as provided for by Batas Pajnbansa Big, 51 and as implemented by Circular 9-A of Joint Commission on Local Government and Personnel Administration and to recover actual, moral and exemplary damages plus attorney's fees.

Petitioner was elected vice mayor of Dasol, Pangasinan in 1980 local elections. Elected with him were Lodovico Espinosa as the municipal mayor and the following members of the Sangguniang Bayan, to wit: Avelino Nacar, Luz Jimenez, Gerardo Rivera, Juan Bonus, Apolonio G. Abella, Jaime Abella, Laurentino Balaoing and Elifas Vidal. All of them assumed office on March 1, 1980. Later on, the following also became members of the Sangguniang Bayan: Linda Bustria, Abraham Balaoing and Ceferino Quintio.

On March 4, 1980, the Sangguniang Bayan adopted Resolution No. 1 which increased the salaries of the mayor and municipal treasurer to P18,636.00 and P16,044.00 per annum respectively. The said resolution did not provide for an increase in salary of the vice mayor despite the fact that such position is entitled to an annual salary of P16,044.00[1] (Circular No. 9-A).

Petitioner questioned the failure of the Sangguniang Bayan to appropriate an amount for the payment of his salary. He wrote letters to the proper authorities complaining about the matter and asking that something should be done to correct it. The proper provincial[2] and national officials[3] endorsed compliance with Circular 9-A of the Joint Commission on Local Government and Personnel Administration in giving the revised rate of salary for petitioner. In fact, the mayor was sent a letter by the Executive Secretary of the Commission advising him that the Municipality should pay the Vice-Mayor the salary due him equivalent to that of the Municipal Treasurer per Circular No. 15.

On December 12, 1980, the Sangguniang Bayan enacted a resolution appropriating the amount of P500.00 per month as the salary of the petitioner. This amount was increased to P774.00 per month in December, 1981.[4]

On October 26, 1982, the Sangguniang Bayan enacted a resolution appropriating the amount of P15,144.00 as payment of the unpaid salaries of the petitioner from January 1, 1981 to December 31, 1982. The resolution was vetoed by the respondent mayor resulting into the filing by the petitioner of this petition for a writ of mandamus on February 16, 1983.[5]

In their comment, the respondents alleged that:

(1) The filing of the petition is premature because the petitioner did not exhaust all administrative remedies contending that petitioner should have lodged his complaint first with the Ministry of Local Government and Community Development; (2) that the petition involves a question of fact and, therefore, this Court does not have jurisdiction over the case because the right of the petitioner to receive a salary depends on the availability of municipal funds and the availability or non-availability of municipal funds is a factual issue which is not cognizable by the Supreme Court"; and (3) that the petition is now moot and academic because on April 20, 1983, the Sangguniang Bayan enacted an appropriation ordinance which among others appropriated an amount of P29,985.00 as payment of salary differentials of the petitioner pursuant to the Supplemental Budget No. 3 Gen. Fund, C.Y. 1983.

Petitioner in his reply argues that: (1) There is no violation of the doctrine of exhaustion of administrative remedies because only the writ of mandamus offers him an adequate and speedy remedy to his legal problem, and the said doctrine can be dispensed with if the issue involved is a legal one and the issue to be resolved in this case - on whether the appropriation of a salary of a vice mayor is a discretionary act or ministerial act - is a legal issue. (2) The only factual issue involved in this case is the ascertainment of damages inflicted to the petitioner due to the failure of the respondents to pay him his lawful salary. The existence of municipal funds from which the salary of the petitioner could be appropriated is not a factual issue anymore due to the certification of the municipal treasurer as to the existence of such funds, and (3) The issue has not become moot and academic because there is no guarantee that even though a resolution appropriating the salary of the Vice Mayor has been enacted, actual payment shall be made to the petitioner.

On June 1, 1983, We gave due course to the petition and required the parties to submit their respective memoranda.

Petitioner admitted that at the time he submitted his memorandum, he has been- fully paid of his salaries as provided for by Batas Pambansa Big. 51 and implemented by Circular No. 9-A of the Joint Commission for Local Government and Personnel Administration.[6]

Since petitioner's claim for salaries has already been provided for and paid, the case has become moot and academic;

Nevertheless, We find and rule that petitioner is entitled to damages and attorney's fees because the facts show that petitioner was forced to litigate in order to claim his lawful salary which was unduly denied him for three (3) years and that the Mayor acted in gross and evident bad faith in refusing to satisfy petitioner's plainly valid, just and demandable claim. (Article 2208, (2) and (5), New Civil Code).

That respondent Hon. Mayor Lodovico Espinosa alone should be held liable and responsible for the miserable plight of the petitioner is clear. Respondent Mayor vetoed without just cause on October 26, 1982 the Resolution of the Sangguniang Bayan appropriating the salary of the petitioner.[7] While "to veto or not to veto involves the exercise of discretion" as contended by respondents, respondent Mayor, however, exceeded his authority in an arbitrary manner when he vetoed the resolution since there exists sufficient municipal funds from which the salary of the petitioner could be paid.⁸ Respondent Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of the petitioner be provided for and paid the prescribed salary rate, is reckless and oppressive, hence, by way of example or correction for the public good, respondent Mayor is liable personally to the petitioner for exemplary or corrective damages.

Petitioner is likewise entitled to actual damages and costs of litigation which We reduce from P13,643.50 to P5,000.00 and for the mental anguish, serious anxiety, wounded feelings, moral shock, social humiliation and

similar injury, We hold that petitioner is entitled to P5,000.00 as moral damages.

All the above sums as damages including attorney's fees in the amount of P5,000.00 shall be paid personally by respondent Mayor Lodovico Espinosa from his private funds.

WHEREFORE, the petition is hereby considered moot and academic but respondent Mayor is hereby ordered to pay petitioner from his private and personal funds actual damages and costs of litigation the amount of P5,000.00; moral damages in the amount of P5,000.00; exemplary or corrective damages in the amount of P5,000.00; and attorney's fees in the amount of P5,000.00.

Costs against respondent mayor.

SO ORDERED.

Makasiar (Acting CJ.), Conception Jr., Abad Santos, De Castro and Escolin JJ., concur.

Aquino, J. (Acting Chairman), concurs in a separate opinion.

[1] Rollo, pp. 10-15, Annexes "A", "-A-I", "A-2", "A-3", "A-4" and "A-5".

[2] Ibid., pp. 20-21, Annexes "B-2" and "B-3".

[3] Ibid., pp. 22-23, Annexes "C" and "C-I".

[4] Ibid., petition, p. 5.

[5] Ibid., p. 6.

[6] Ibid., Memorandum, p. 64.

[7] Ibid., petition, p. 6.

[8] Annexes "D", "D-I" and "D-2".

CONCURRING

AQUINO, J.,

As respondent mayor acted in bad faith in not performing his legal duty to appropriate the requisite amount for the payment of petitioner's salaries, he become personally liable for damages.

The governing law is found in Article 27 of the Civil Code which makes a public servant or employee Hable for damages for his refusal or neglect, without just cause, to perform his official duty (Javellana vs. Tayo, 116 Phil. 1342, where a municipal mayor was adjudged liable to pay P100 as moral damages and P100 as attorney's fees for failure to sign the payrolls for the per diems of certain councilors).

Article 2219(10) of the Civil Code allows moral damages in an action under Article 27.

The propriety of mandamus, as the remedy restored to by the petitioner, was settled in Guerrero vs. Carbonell, 96 Phil. 977 and Bernardo vs. Pascual, 93 Phil. 345.

Section 4, Rule 65 of the Rules of Court allows the petitioner to cover damages by reason of the

respondent mayor's wrongful act. The attorney's fees and litigation expenses are justified by Article 2208 of the Civil Code.

However, I personally believe that the sum of P15,000 would be an adequate award for the moral and exemplary damages, attorney's fees and litigation expenses.

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