

TEODORA B. DE LA CRUZ, PETITIONER-APPELLANT, VS. TEODULO G. GABOR, ROSENDO M. HERNANDEZ, HON. SEC. OF EDUCATION, HON. COMMISSIONER OF CIVIL SERVICE AND EVANGELINE ESPINOSA, RESP...*G.R. No. L-30774. October 31, 1969*

Ponente: REYES, J.B.L., J.

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Certified to Us by the Court of Appeals is this appeal from an order of the Court of First Instance of Leyte (Tacloban City Branch), in its Civil Case No. 3473, dismissing without costs a petition for mandamus and quo warranto with preliminary injunction and damages.

Appellant Teodora B. de la Cruz filed the original petition seeking reinstatement to the position of classroom teacher of Cosmetology I and II, formerly held by her for fifteen years in the Leyte Regional School of Arts and Trades under a provisional appointment (although she was a civil service eligible), and of which she was allegedly deprived through the bad faith and fraudulent machinations of the principal (one Hernandez, since deceased) and Superintendent, Teodulo G. Gabor, of the aforesaid Institute, who, by representing that petitioner was teaching special, not regular courses, caused the Secretary of Education to recommend the abolition of the special course and the termination of petitioner's services to the Bureau of Civil Service, effective 30 March 1963, as was done. She further averred that in her stead was assigned one Miss Espinosa, who "had no civil service eligibility, no teaching experience and a new comer." Her petitions for reconsideration having been fruitless, appellant instituted the action against Hernandez, Gabor, Espinosa, the Secretary of Education, the Civil Service Commissioner, and the Director of the Bureau of Vocational Education.

The court below at first denied respondent's motion to dismiss, and after answer set the case for pre-trial. Subsequently, upon reiteration of the motion for dismissal of respondents, the court, by order of 21 May 1966, dismissed the petition on two grounds:

(a) Lack of jurisdiction over respondents Secretary of Education, Director of Vocational Education and Commissioner of Civil Service, "for the writ of certiorari and injunction does not lie against them as they are holding office in Manila, outside the jurisdiction of this Court, pursuant to Section 44 (h) of the Judiciary Act (Republic Act No. 296)" and decisions of the Supreme Court;

(b) As to the other respondents, "on the ground that the petitioner has not exhausted all the remedies afforded by law, after her ouster from office on 30 March 1963, before filing the present extraordinary legal remedy at bar in court."

Unable to secure reconsideration, petitioner appealed.

The Court of First Instance correctly stated the law to be that it had no jurisdiction to issue the preliminary mandatory injunction prayed for in the complaint against the national officials stationed outside of the territorial

jurisdiction of the court. Section 44 (h) of the Judiciary Act and the constant jurisprudence of this Supreme Court are clear to that effect (see *Palanan Lumber and Plywood Co. vs. Judge Arranz*, L-27106, 20 March 1968, and cases therein cited); and, contrary to appellant's view, Section 17, paragraph 1, of the Judiciary Act, that defines the jurisdiction of the Supreme Court in concurrence with that of the courts of first instance, in no way enlarges the power of the latter beyond the territorial limits set by Section 44 (h).

However, that the Secretary of Education and the Commissioner of Civil Service (whose official residences are in Manila) should not be restrainable by the Court of First Instance of Leyte does not impede the latter tribunal from taking cognizance of the appellant's action for reinstatement and damages against Superintendent Gabor, school principal Hernandez, and teacher Evangeline Espinosa, who are stationed in Leyte province. The proper action should have been to order the amendment of the complaint to exclude the national officials aforementioned and proceed to a hearing on the merits of the case against the remaining defendants. Analysis of the allegations

of the complaint, specially paragraphs 4, 5, 6 and 7-a thereof, shows that the main cause of action was based on an alleged fraudulent and illegal ouster of petitioner from her position as regular teacher in the faculty of the Leyte Regional School of Arts and Trades, brought about by the allegedly deceptive machinations of Gabor and Hernandez, and on petitioner's improper substitution by teacher Espinosa, who, according to the complaint, is neither eligible nor qualified for the post. If it be proved that Gabor and Hernandez deceived the higher Government officials into dismissing petitioner, her original position never became really vacant, and, therefore, Espinosa could not be lawfully appointed thereto.

The lower court's second ground for dismissal, to wit, that complainant had not exhausted her administrative remedies, is not supported by the record either. Pages 144 to 161 of the Court of First Instance record amply demonstrate that petitioner De la Cruz repeatedly, but in vain, sought remedy from the administrative officials of the Department of Education. Considering the limitation of one year from ouster prescribed for the initiation of quo warranto proceedings^[1] (and hers was an action of this nature), we are of the opinion that she could not be expected to do more.

WHEREFORE, the order of dismissal complained of is reversed and set aside, and the records ordered remanded to the court of origin for further proceedings in confirmity with this opinion.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee and Barredo, JJ., concur.

[1] Rule 67, Section 6, Revised Rules of Court.

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