

**BASILIO T. ROQUE AND EMILIO GA. ACDAL,
PETITIONERS-APPELLANTS, VS. HON. VICENTE G. ERICTA, IN HIS
CAPACITY AS DISTRICT JUDGE OF ZAMBOANGA DEL SUR; HON.
VICENTE M. CERILLES, IN H...**

G.R. No. L-30244. September 28, 1973

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petitioners seek a review by way of certiorari the decision, dated November 26, 1968, of the respondent Judge, Hon. Vicente G. Ericta, of the Court of First Instance of Zamboanga del Sur, dismissing their petition for mandamus (Special Case No. 723), filed on August 27, 1968, to compel the members of the Provincial Board of the province (hereinafter referred to as respondent Board) to appropriate the necessary funds to pay for their salaries as special counsels in the Office of the Provincial Fiscal of Zamboanga del Sur, their positions having been unlawfully abolished by the respondent Board in its Resolution No. 340, dated June 25, 1968, and their corresponding items therefor eliminated from the budget of the province for the fiscal year 1968-1969. The reasons given by the court a quo for the dismissal were (1) the failure of petitioners-appellants to prove that there were funds available for their salaries for that fiscal year, and (2) the absence of sufficient showing that respondent Board acted in bad faith.

The essential facts of the case, which are not disputed, are set forth in the appealed decision, as follows:

"Petitioners Emilio Ga. Acdal and Basilio T. Roque are special counsels in the office of the Provincial Fiscal duly appointed as such by the Secretary of Justice on February 20, 1964 under Section 1686 of the Revised Administrative Code. Roque assumed office on March 11, 1964 while Acdal assumed office on March 30, 1964. The petitioners were designated special counsels to assist the Provincial Fiscal of this province in the prosecution, not of specified cases, but of cases in general in connection with the discharge of the regular duties of said provincial fiscal. Since their assumption of office, they have been discharging their duties continuously from March, 1964 up to the date of the trial in September, 1968. The provincial fiscal testified that both petitioners have been performing their duties efficiently. They have been receiving their salaries regularly from the date of assumption of office to July 31, 1968. After July 31, 1968, they ceased to receive their regular salaries.

"On January 1, 1968, the respondents passed Resolution No. 6 abolishing the positions of the petitioners. Hence, the petitioners pleaded with the governor and asked for reconsideration.

"On April 16, 1968, Resolution No. 201 was passed restoring the item of Roque as a special counsel and repealing Resolution No. 6 alluded to above (Exhibit 'J'). On May 21, 1968, Resolution No. 270 was passed restoring the item of Acdal as a special counsel and also repealing Resolution No. 6 which had previously abolished his position (Exhibit 'I').

"Respondent Governor Cerilles testified that Resolutions Nos. 201 and 270 were passed on the promise of the petitioners to resign on June 30, 1968. Acdal denied that he ever made such a promise. On the other hand

Roque declared that he proposed to resign if he could hold office up to June 30, 1968. The Governor agreed provided Roque approached a certain mayor, but Roque did not approach the mayor.

"Finally on June 25, 1968, respondents passed Resolution No. 340 abolishing anew petitioners' positions (Exhibit 'G'). In the budget for the fiscal year 1968-1969, the items of both petitioners were abolished (Exhibit '7')." [1]

On July 25, 1968, the Acting Secretary of Finance approved the general fund appropriation for said province for the fiscal year 1968-1969 (Exhibit "6") under the following conditions:

"1.

That the appropriation of P48,000.00 set aside for discretionary fund of the Governor shall be reduced to P20,413.40; the amount allowable for the purpose and that after the excess appropriation of P27,587.60 is reverted to the unappropriated account, portion thereof shall be re-appropriated to cover the deficiency of P13,585.10 in the contribution to the hospital fund. Copy of the supplemental budget adopted for the purpose should be submitted to this Department for review within twenty (20) days from receipt hereof;

"2.

That the appropriations set aside for representation allowances of the provincial officials shall be disbursed strictly on a reimbursement basis and that the monthly representation expenses of each official chargeable against the said appropriations shall not exceed the monthly rates prescribed under Memorandum Circular No. 138, dated December 15, 1967, of the Office of the President; and

"3.

That in giving effect to the proposed abolition of two positions of special counsels the provisions of the civil service laws and rules should be strictly observed."

Based upon the foregoing facts, the respondent Judge rendered the aforementioned decision against the herein petitioners, who seasonably filed a motion for new trial which was denied by respondent Judge in his order dated December 20, 1968. Hence, the present appeal.

In their brief filed with this Court, petitioners-appellants now contend that the trial court erred: (1) in not holding that Resolution No. 340, abolishing their positions, violated Republic Act No. 4007, Civil Service Act of 1959, and Section 2119 of the Revised Administrative Code; (2) in not finding that the respondent Board passed Resolution No. 340 in bad faith; and (3) in not holding that the respondent Board abolished their positions for political reasons. Respondent Board submitted the case without any brief.

It is, therefore, necessary to determine whether the action of the respondent Board, in abolishing the positions of petitioners as special counsels, and in failing to provide appropriations for their salaries in accordance with existing laws, had the effect of unlawfully excluding the petitioners from the use or enjoyment of a right or office to which they are entitled under the law.

To begin with, the pertinent provisions of the questioned Resolution No. 340 read as follows:

"WHEREAS, the Plantilla of Personnel for the General Fund was submitted to this august Body, finding said plantilla satisfactory except for certain changes and pursuant to Res. No. 291, current series;

"On motion duly seconded, it was

"RESOLVED, to maintain the status quo of all Plantilla of Personnel as of Fiscal Year 1967-1968 except as follows: The Office of the Provincial Attorney is hereby separated and made a distinct office with a skeleton complement of personnel; that in accordance with the letter of the Provincial Fiscal dated January 30, 1968 and in view of the transfer of duties of being the Legal Officer of the province unto the Provincial Attorney, the two positions of Special Counsels in the Office of the Provincial Fiscal are hereby abolished, providing however, the sum of P4,500.00 to cover the period of notice and accrued leaves accruing to the incumbents; that of the 50 positions which carried 6 months appropriation during the last fiscal year, only such number as may be deemed necessary for the enhancement of the public service shall be provided with a whole year appropriation; that increases in compensation of the staff of the Office of the Provincial Vice-Governor shall be taken out of the deleted positions and/or those without appropriation in the Governor's Office.

"RESOLVED, FURTHER, that copies of this resolution be furnished the Provincial Treasurer, Provincial Auditor, all of Pagadian, this province, and the Secretary of Finance, Manila.

"CARRIED UNANIMOUSLY." [2] (Underscoring supplied.)

There is no question that from March, 1964, when petitioners-appellants assumed their positions as special counsel, with a salary of P4,800.00 per annum each, [3] to June 25, 1968, when their aforesaid positions, with an increased salary of P5,400.00 per annum each, were finally abolished by the aforequoted Resolution No. 340, they had already rendered continuous and efficient service [4] for more than four (4) years in the Office of the Provincial Fiscal of Zamboanga del Sur, and that at the time of the abolition they were, as found by the respondent Judge upon the evidence, [5] holding permanent appointments, under Republic Act No. 4007. This Act, which amended Section 1686 of the Revised Administrative Code, provides, among others, that after a special counsel is appointed or designated to assist the provincial fiscal in the prosecution not of a specified case or cases but of cases in general, in connection with the regular discharge of said provincial fiscal's duties and shall have continuously and efficiently served as such for at least four (4) years, he shall be deemed to have been permanently appointed, and he may be removed or separated from the service only for cause as provided for by the Civil Service Law, Rules and Regulations. Thus, under the amendatory provisions of Republic Act No. 4007, which took effect on June 18, 1964, the petitioners-appellants, for all intents and purposes, are considered civil service employees with permanent appointments having met all the requirements for the positions to which they are appointed, pursuant to Section 24(b) of the Civil Service Act of 1959 (Republic Act No. 2250). [6] As such, they may not be removed or separated from the service except for cause.

We start from the premise that while abolition of an office does not imply removal of the incumbent, [7] such rule holds true only where the abolition is made (1) in good faith, [8] (2) not for personal or political reasons, [9] and (3) not in violation of the law. [10] Thus, evidence of bad faith is shown when the purpose of the abolition of office is to discharge the incumbent in violation of the civil service law. [11] Thus:

"As well settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void (*Briones vs. Osmeña*, 104 Phil., 588; *Gacho vs. Osmeña*, 103 Phil., 837; *Gonzales vs. Osmeña*, L-15901, 30 Dec., 1961; *Urgelio vs. Osmeña*, L-14908, 31 October 1963; *Ocampo vs. Duque*, L-23812, 30 April 1966, 16 SC Rep. Anno. 962; *Abanilla vs. Ticao*, L-22271, 26 July 1966, 17 SC Rep. Anno. 652; *Arao vs. Luspo*, L-23982, 21 July 1967, 20 SC Rep. Anno. 722)." [12]

The principal reasons advanced by respondent Board for the abolition of the positions of the two special counsels, are: (1) the positions are unnecessary - "as the duties of the Provincial Fiscal as legal officer of the province had been removed from his office and vested upon the Provincial Attorney" [13] and "the prosecution of crimes in a

court of justice is purely a state affair (sic) therefore eliminating the necessity for the employment of Special Counsels to act for and in behalf of and to protect the interest of the provincial government. . .;"[14] and (2) economy - "the province is laboring under heavy stress of financial adversities (sic) . . . "[15]

These purported justifications - after a review of the record -appear unimpressive. Circumstances there are, which indicate them to be but a mere artifice to conceal the unlawful removal of permanent civil service employees, in violation of their security of tenure guaranteed by the Constitution.

- The mere fact that the functions of the Provincial Fiscal as legal adviser and legal officer of the province have been transferred to the Provincial Attorney does not necessarily render the positions of prosecuting officers, such as those of special counsels, unnecessary. The reasoning of respondent Board in this regard suffers from fallacio consequentis. The prosecution of offenses is a matter of public interest, and it is the duty of the government to prosecute all cases without oppressive, capricious or vexatious delay. The provincial government of Zamboanga del Sur cannot disengage itself from such a responsibility. In the order of administrative priorities, the two special counsels appointed by the Secretary of Justice to assist the fiscal with authority to sign informations, make investigations, and direct prosecutions[16] could not be equated with the Provincial Attorney who discharges an entirely different public function, much less can the former be considered of lesser import than the latter. Obviously aware that the Office of the Provincial Fiscal, with the abolition of the positions of the two special counsels, would be unable to cope with the numerous cases pending investigation and trial, respondent Board, in the same Resolution No. 6 (Exhibit "1"), requested the President of the Philippines to "allocate to the province * * * it being a first class province" three (3) additional Assistant Provincial Fiscals "for the purpose of aiding the Provincial Fiscal and his two Assistants in the prosecution of offenses." Such a request to the President of the Philippines for the creation of those positions, which necessarily entails appropriation by respondent Board of a portion of the salaries of said Fiscals,[17] is inconsistent with its claim that the positions of the petitioners have become unnecessary, or that their abolition is dictated by reasons of economy. Assertions that the positions of petitioners are not necessary are further rebutted by the fact that in his letter to the respondent Board, dated January 30, 1968, the Provincial Fiscal pleaded that the abolition of petitioners' positions be deferred as "there are so many pending cases for investigation and trial" which his office will then be unable to handle effectively to the detriment of the public service.[18]

- The additional reason advanced by respondent Board is that the abolition of the appropriation of P10,800.00 per annum for petitioners is compelled by the tight financial condition of the province. This purported justification flies in the face of the fact that, in the same Resolution No. 340 abolishing those positions, the funds from the deleted positions were re-appropriated for the "increases in compensation of the staff of the Office of the Provincial Vice-Governor." [19] And what is more revealing is the circumstance that in the general fund annual budget for fiscal year 1968-1969, the discretionary fund of the Governor was increased to P48,000.00, which appropriation was in excess of the 5% limitation prescribed by the Provincial Treasurer's Memorandum, dated February 21, 1966, of the General Auditing Office, thereby constraining the then Acting Secretary of Finance to order the reduction of said discretionary fund to the allowable amount of P20,413.40, and that out of the excess of P27,586.60, to re-appropriate the sum of P13,585.10 as the contribution of the province to the Hospital Fund. Considering that after the re-appropriation of P13,585.10 to the Hospital Fund out of the excess appropriation of P27,586.60 there would still be a balance of P14,001.50, an amount more than sufficient to cover the P10,800.00 needed for the salaries of petitioners, it is evident, therefore, that funds were available for the salaries of petitioners for the fiscal year 1968-1969.

Moreover, since the petitioners have acquired the status of permanent appointees under Republic Act No. 4007, they may not be removed or separated from the service except for cause as provided for by the civil service law. This principle was enunciated in *Ocampo, et al. v. Duque, et al.*[20] where We held that the abolition of the positions of special counsels of Pangasinan, after the incumbents have become regular and permanent appointees

pursuant to the provisions of Republic Act No. 4007, is repugnant to the spirit and express provisions of said law.

"We find that the abolition of the positions of the petitioners by the respondents is contrary to law. Upon the enactment of R.A. No. 4007, the petitioners had become regular and permanent appointees and they may be removed or separated from the service only for cause as provided for by the civil service law, rules or regulations. The Solicitor General himself says in his memorandum: 'Evidently the purpose of R. A. 4007 was to give a fixity in the tenure of those who had served as special counsel, x x x who shall have continuously and efficiently served for at least four years.' R.A. No. 4007 was precisely enacted by Congress to prevent the termination of the services of a special counsel through the abolition of his item by the provincial board or city board. The legislative intention, which must be given effect, is clearly understood upon a reading of the explanatory note of H.B. No. 7602, which states:

'This bill seeks to amend Section 1686 of the Revised Administrative Code so as to give security of tenure to special counsels designated by the Secretary of Justice to assist provincial and city fiscals in the prosecution of criminal cases and in the discharge of their regular duties.

'There are about 150 special counsels all over the Philippines. Many of them have been in the prosecution service for more than five years, and have efficiently and capably prosecuted criminal cases. According to the Administrative Code, the services of special counsel are temporary and may therefore be terminated, with or without cause, through abolition of his item by the provincial board or city board concerned.

'Special counsels perform the same work that assistant provincial and city fiscals do, yet their salaries are generally lower.

'This bill aims to grant permanent status to special counsels who have continuously and efficiently served the prosecution service for a long time and to give them better compensation after continuous efficient service of at least six years.'

"We hold, therefore, that the provisions of resolution No. 598, abolishing the positions of the petitioners, are repugnant to the spirit and the expressed provisions of R.A. No. 4007." (*Italics supplied*)

We, therefore, declare, and so hold, that the abolition of the positions of the petitioners-appellants, pursuant to Resolution No. 340, is null and void; that the respondent Board has unlawfully excluded the petitioners-appellants from the enjoyment of a right or office to which they are entitled; that in failing to include their items since the fiscal year 1968-1969 to cover appropriations for their salaries, the respondent Board has unlawfully failed or neglected the performance of an act which the law enjoins as a duty resulting from office.

WHEREFORE, the appealed judgment is hereby reversed and another entered declaring the abolition of petitioners-appellants' positions as special counsels null and void, and ordering the respondent Board to appropriate the amounts necessary for the salaries of petitioners for the fiscal year 1968-1969, and for the fiscal years thereafter, pursuant to the provisions of Republic Act 4007, together with such amounts as may be necessary to pay the contribution of the province to the Government Service Insurance System in connection with petitioners' insurance and retirement privileges. No costs.

IT SO ORDERED.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

[1] CFI decision of November 26, 1968, Record, pp. 26-27.

[2] Exhibits G and 5, CFI Record of Exhibits, pp. 9 & 19.

[3] Appellant Basilio T. Roque assumed office on March 11, 1964, see Exh. C, Record of Exhibits, p. 3; while appellant Emilio Ga. Acdal, on March 30, 1964, see Exh. A, Record of Exhibits, p. 1.

[4] The Provincial Fiscal testified that both appellants had been performing their duties efficiently, and that they had been receiving their salaries regularly from the date of assumption of office to July 31, 1968. See, also, CFI decision, dated Nov. 26, 1968, Record, pp. 26-27.

[5] On the latter date (June 25, 1968), the positions of the petitioners had acquired the status of permanency under Republic Act 4007 (Ocampo v. Duque, L-23812, April 30, 1966), and they could no longer be removed or separated from the service except for cause. See CFI decision, Record, p. 29.

[6] "SEC. 24. Personnel Actions and Employment Status. –

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"(b) Permanent Appointment. - A permanent appointment shall be issued to a person who has met all the requirements of the position to which he seeks appointment in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto. All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period: Provided, That such action is appealable to the Commissioner of Civil Service under section sixteen, paragraph (f) of this Act."

[7] Manalang v. Quitoriano, et al. (1954), 94 Phil., 903, 907; Canonigo, et al. v. Ramiro, etc., et al., L-16316, Jan. 1970, 31 SCRA 278; Rodriguez v. Montinola (1954), 94 Phil., 964, 974; Castillo v. Pajo, et al (1958), 103 Phil., 515, 516-517; Facundo v. Pabalan, L-17746, Jan. 31, 1962, 4 SCRA 375; Arao v. Luspo, L-23983, July 21, 1967, 20 SCRA 722; Art XII, Sec. 4, Constitution of the Philippines (1935); Art. XII-B, Sec. 3, Constitution of the Republic of the Philippines (1973); Cruz, et al. v. Primicias, Jr, et al., L-28573, June 13, 1968, 23 SCRA 998, 1003.

[8] Cruz, et al. v Primicias, Jr., et al., *ibid*; Abanilla, et al., v. Ticao, et al., L-22271, July 26, 1966, 17 SCRA 652; Maza v. Ochave, L-22336, May 23, 1967, 20 SCRA 142, 146; Ocampo, et al. v. Duque, et al., L-23812, April 30, 1966, 16 SCRA 962; Llanto v. Dimaporo, et al., L-21905, March 31, 1966, 16 SCRA 599, 604; Alipio, et al. v. Rodriguez, etc., et al., L-17336, Dec 26, 1963; Urgelio, et al. v. Osmeña, Jr., et al., L-14908, Oct 31, 1963, 9 SCRA 317.

[9] Arao v. Luspo, *ibid*.; Guellergan, et al. v. Ganzon, et al., L-20818, May 25, 1966, 17 SCRA 257; Gacho, et al. v. Osmeña, Jr., et al. (1958), 103 Phil., 837.

[10] Ocampo, et al., v. Duque, et al., *ibid*.; Alipio, et al. v. Rodriguez, et al., *ibid*.; Urgelio, et al., v. Osmeña, Jr., et al., *ibid*.; Gacho, et al. v. Osmeña, Jr., et al., *ibid*.; Briones, et al. v. Osmeña, Jr., (1958), 104 Phil., 588.

[11] Alipio, et al. v. Rodriguez, etc., et al., *ibid*.; Ocampo, et al. v. Duque, et al., *ibid*.

[12] L-26316 January 30, 1970, 31 SCRA 278; See also Cruz, et al. v. Primicias, Jr., et al., L-28573, June 13, 1968, 23 SCRA 998, 1003.

[13] Resolution No. 6, January 1, 1968 [Exhibit "1"], reiterated in Resolution No. 340, June 25, 1968.

[14] *Ibid*.

[15] *Ibid*.

[16] Lo Cham v. Ocampo, 77 Phil., 635.

[17] Rep. Act 3719.

[18] Exhibit "2".

[19] Exhibit "G".

[20] L-23812, April 30, 1966, 16 SCRA 962, 970-971, 973-974.

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