

CORNELIO ANTIQUERA, PLAINTIFF AND APPELLANT, VS. HON. SOTERO BALUYOT, SECRETARY OF THE INTERIOR, HON. MANUEL DE LA FUENTE, MAYOR OF THE CITY OF MANILA, AND MACARIO M. OFILADA, S...

G.R. No. L-3318. May 05, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

The facts of this case are stated by the Court of First Instance of Manila in the decision appealed from, as follows: "In its plan for reorganization of the different departments and offices of the city government, the committee on reorganization created by the Municipal Board of the City of Manila recommended the abolition of the position of assistant chief of a division. The defendant Sheriff having been requested by the defendant Mayor to give his comment on such a recommendation, informed said defendant Mayor on June 6, 1947 that he found it well founded insofar as it affected his office. As a consequence thereof, the position of assistant chief deputy sheriff held by the plaintiff was abolished as of July 1, 1947 and eliminated from the Appropriation Ordinance No. 3072, series of 1947, of the Municipal Board of Manila. His position having been abolished, the plaintiff, on July 30, applied for retirement with gratuity under the provisions of Act No. 4183. On July 31, 1947 the defendant Sheriff recommended approval thereof. In turn, the Commissioner of Civil Service stated in his indorsement dated August 5, 1947 that his office had no objection to the plaintiff's application for retirement with gratuity. The chairman of the special committee on retirement at first insisted that the retirement of the plaintiff should be under Act 2589 known as the Osmeña Act instead of under Act No. 4183, plaintiff having likewise applied for retirement under said act, but after favorably considering the reasons given by the defendant Sheriff, he then withdrew his objection. On August 15, 1947, the defendant Mayor submitted plaintiff's application to the Municipal Board of Manila with his favorable recommendation, and on August 25, 1947 the Municipal Board of Manila adopted resolution No. 291 approving plaintiff's application and four days thereafter the defendant Mayor approved said resolution. On September 5, 1947, the City Treasurer of Manila certified that there were funds available for the payment of the twelve installments on plaintiff's gratuity. On the same date, the Secretary of Justice recommended approval of plaintiff's retirement and later the Secretary of Finance stated that his department will interpose no objection to plaintiff's retirement under Act No. 4183. But on September 30, 1948, the defendant Secretary of the Interior, after having made his own findings of fact and conclusion, rendered his decision disapproving plaintiff's retirement under Act No. 4183, stating therein, among other things, that the plaintiff failed to show that he had complied with the requirements provided for under Act No. 4183. On January 31, 1949 the plaintiff asked for a reconsideration of the ruling of the defendant Secretary of Interior, but it was denied."

Section 1 of Act No. 4183, under which appellant seeks to retire provides that "in order to grant a gratuity to provincial and municipal officers and employees who resign or are separated from the service by reason of a reorganization thereof, the provincial boards and municipal councils may, with the approval of the Secretary of

the Interior, retire their officers and employees, granting them, in consideration of satisfactory service rendered, a gratuity equivalent to one month's salary for each year or fraction of a year of service, but not exceeding twenty-four months in any case, on the basis of the salary they receive at the time of leaving the service, to be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary."

It was reasoned out by the defendant Secretary of the Interior in disapproving the retirement applied for by the appellant under Act No. 4183, that the mere abolition of the item or position of an applicant for retirement does not necessarily mean reorganization of the service; that in applicant's case there was no such reorganization because the number of personnel in the office of the sheriff of Manila after the alleged reorganization was increased from 53 to 59, and the appropriation for salaries and wages was increased from P48,920 to P55,900, coupled with the fact that while the position of the appellant was eliminated, a new position of deputy sheriff as administrative officer was created with a salary of P1,220; that it was the consistent policy of the Department of the Interior to require, in addition, that the position abolished is dispensable, that the applicant is too old or physically or mentally disabled to continue rendering further service. According to the defendant Secretary these requirements have not been met by the appellant.

The complaint filed by the plaintiff-appellant contains the following prayer: "Wherefore, plaintiff prays that this Honorable Court make a declaration and determination of his rights, liabilities, duties and jural relations, and that it be declared and determined that he is lawfully entitled to the payment of the retirement gratuity in question under the provisions of Act No. 4183, as amended, equivalent to one month's salary for each year or fraction of a year of service but not exceeding twenty-four months, minus however the money value of the benefits received by him approved ad interim by the defendants under Act 2589, commonly known as the Osmeña Act; and that the defendants be declared and determined to be duty bound to approve the said plaintiff's retirement gratuity; and that the plaintiff have such other further, different and general relief as he may be entitled to."

In disposing of the case, the trial court held: "Considering the foregoing facts, it is evident that the defendant Secretary of the Interior had passed already upon plaintiff's application for retirement ruling adversely against him, and the defendants Mayor and Sheriff had no other alternative than to obey and follow the decision of their co-defendant Secretary of the Interior. Such being the case, plaintiff's claim is now a settled matter as it was decided by the defendant Secretary of the Interior in the exercise of his discretionary power granted to him by Act No. 4183 and in accordance with its provisions. In view thereof, this Court is of the opinion and so holds that it is not within its power and authority to grant to the plaintiff the relief he is seeking. But in the supposition that this Court has jurisdiction to pass judgment upon plaintiff's application, it appearing that such application was disapproved by the defendant Secretary of the Interior in the exercise of his discretionary power based upon his own opinion of the facts relative to plaintiff's application, this Court does not believe itself to be in a position to interfere with the defendant Secretary of the Interior in the exercise of his discretionary power in the absence of any justification for such interference. Lastly, if the plaintiff has any right of action under the circumstances surrounding his case, evidently the present case is not the proper one to enforce it."

We are of the opinion that the ground advanced by the defendant Secretary of the Interior for disapproving appellant's retirement under Act No. 4183, is clearly untenable. Said Act plainly provides that a municipal officer or employee who is separated from the service by reason of a reorganization thereof may be retired by the municipal council, with the approval of the Secretary of the Interior. There is no question that the position of appellant was abolished as a result of the reorganization of the different departments and offices of the City of Manila in accordance with the plan adopted by the committee on reorganization created by the Municipal Board. In the indorsement of the sheriff of Manila of August 13, 1947, it was certified that the position of assistant chief deputy sheriff was abolished in Ordinance 3072 in conformity with the scheme of the reorganization approved by

the corresponding authorities. In resolution No. 291, approved by the Municipal Board on August 29, 1947, appellant's application for retirement under Act No. 4183 was approved, and it was therein expressly stated that his position was abolished in Ordinance 3072. It is in view of the abolition of appellant's item as a result of the reorganization effected in conformity with the plan of the committee on reorganization created by the Municipal Board of Manila, that the Commissioner of Civil Service and the Secretary of Justice recommended the approval of appellants retirement under Act No. 4183. Even the Secretary of Finance was agreeable, and the City Treasurer had certified that funds were available for the payment of twelve installments on the gratuity.

The simple requirement provided by Act No. 4183, in order that a municipal officer or employee may be retired thereunder, is that he be separated from the service by reason of a reorganization. The term "reorganization", without more, is not required to be one in which the appropriation for a given office should be reduced and it should be reasonably interpreted as allowing a reorganization that may carry more or less appropriation, depending upon the exigencies of the service. In the case of the office of the sheriff of Manila, the higher appropriation resulting from the reorganization might have been due to increased activities of the office. The important and decisive fact, in order that a municipal officer or employee may come under Act No. 4183, is that his position or item be abolished. A valid reason for disapproval would have been that the service of the petitioner was not satisfactory, but the defendant Secretary had not made even the slightest intimation to that effect. It is needless to rule that no additional requisites may be read into the law. Indeed, Act No. 4183 does not contain any provision authorizing the Secretary of the Interior to promulgate regulations as to the scope of the term "reorganization." In contrast, as regards gratuity payments, section 2 of Act No. 4183 provides: "With the approval of the Secretary of the Interior, such officer or employee may, in conformity with regulations to be approved by the Secretary of Finance, sell, transfer or assign his right to the gratuity payments to any investment fund under the control of the Insular Government, or to any bank duly authorized to do business in the Philippine Islands."

While it may therefore be admitted that the Secretary of the Interior has the discretion to approve or not to approve an application for retirement under Act No. 4183, we hold that there was a clear abuse of such discretion under the circumstances of the case at bar.

The appellant considers his complaint as one for declaratory relief, but we are inclined to view the same as a special civil action for mandamus, the allegations of the complaint being sufficient for the purpose. Although the complaint is not under oath, this is of no moment, since the facts alleged therein are admitted by the defendants-appellees. (*Go Bon Chiat, etc. vs. Gonzales, etc., et al.*, 87 Phil., 682.)

Although the general rule is that the courts will not attempt to interfere with the exercise of a discretionary power, exceptions to the rule are found in cases of gross abuse of discretion, manifest injustice, or palpable excess of authority, because the discretion must be exercised under the law, and not contrary to law.

"However, although the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by mandamus to act but not to act one way or the other, yet it is not accurate to say that the writ will never issue to control his discretion. There is an exception to the rule if the case is otherwise proper, as in cases of gross abuse of discretion, manifest injustice, or palpable excess of authority." (*Moran, Comments on the Rules of Court*, 3rd Ed., Vol. II, pp. 172-173.)

"* * * In other words, the discretion which will withstand review by mandamus must be exercised under the law, and not contrary to law. For the discretion in question is not an arbitrary, vague, or fanciful one, but a legal, regular, and sound discretion which must be governed by rule and exercised under established principles of law. If, in the attempted performance of discretionary acts, the official abuses the discretion, so as to amount to a failure to do the act as the law requires, or if by a mistaken view of the law, there has been in fact no actual

exercise in good faith of the judgment or discretion vested in the officer, mandamus is a proper remedy." (34 Am. Jur., Sec. 69, pp. 858-859.)

The case of Cabaluna vs. Ventura and Agoncillo, 47 Phil. 165, is not controlling. It is true that it was therein held: "From what has been said it is manifest that the action taken by the respondent Secretary of the Interior in disapproving the order of Governor Montinola for the payment of the withheld salary was based upon an erroneous assumption as to the state of the law. But it does not follow that this Court has jurisdiction to compel the Secretary of the Interior or his correspondent, the Chief of the Executive Bureau, to order the payment of said salary." But in said case the petitioner invoked section 2192 of the Revised Administrative Code which provides that "a municipal officer suspended from duty pending an investigation of charges against him shall receive no pay during such suspension; but upon subsequent exoneration or reinstatement, the Department Head may order the payment of the whole or part of the salary accruing during such suspension." Under this provision, it is obvious that only the Secretary of the Interior may order the payment of salary to a suspended municipal officer. Upon the other hand, Act No. 4183, invoked by the petitioner in the case at bar, authorizes a municipal council to grant gratuity to any municipal employee whose position is abolished by reason of a reorganization, with the approval of the Secretary of the Interior. The conspicuous difference, therefore, is that whereas under section 2192 of the Revised Administrative Code (involved in the case of Cabaluna vs. Ventura and Agoncillo) the Secretary of the Interior is made the sole judge as to whether salary during suspension may be paid, under Act No. 4183 (the basis of the present action), the municipal council is principally called upon to carry out its beneficent intention of rewarding the services of employees who may lose employment through no fault of their own and, accordingly, to determine in the first place what cases fall within the purview of said Act.

Wherefore, the appealed judgment is reversed and the defendants-appellees are hereby ordered to approve the application for retirement under Act No. 4183 filed by the herein plaintiff-appellant. So ordered without costs.

Pablo, Tuason, Montemayor, and Labrador, JJ., concur.
Bautista, J., no part.

REYES, J.:

I concur in the result. There being no showing that the reorganization was a sham, it would be but an act of simple justice to give plaintiff his retirement gratuity.

DISSENTING

BENGZON, J.:

If the traditional theory of separation and equality of the three powers of Government with the consequent mutual respect among them is to have meaning and substance, decisions of Department Secretaries on administrative matters should be sustained by the judiciary whenever fairly sustainable under the legal provisions.

In the light of this vital principle I approach the questions at issue in this litigation, and I find,

First. Under Rule 67 section 3 mandamus lies only where, the petitioner has a clear legal right.[1] Act 4183 gives petitioner the right to retirement when and if such retirement is approved by the Secretary of the Interior. The retirement was disapproved by that Cabinet member. Therefore, petitioner has no right to retirement enforceable by the writ of mandamus.

Second. It is alleged, however, that the Secretary's discretion has been grossly abused,—underline grossly—and that

mandamus is the proper remedy. Granting that mandamus applies where discretion is involved,[2] nonetheless I believe it is difficult to declare gross abuse in the matter before us.

The Secretary of the Interior denied the retirement because, (a) applicant's separation was not caused by a reorganization; (b) it was not proved that applicant's position was "dispensable"; and (c) the applicant was not "too old or physically or mentally disabled to continue rendering further service".

The majority decision, taken as a whole, adjudicates in this manner: (1) the applicant's separation was caused by reorganization; (2) Ergo, the Secretary grossly abused his discretion in refusing to approve the retirement.

With all due respect, I invite attention to a couple of missing links in that chain of reasoning. After announcing the first proposition and before drawing the conclusion, the majority should have added (but it could not) (1-A) that the applicant's position was "dispensable" and (1-B) that the applicant was physically unable to continue serving.

To justify the inference of gross abuse of discretion, the three reasons of the Secretary—not one only—must be demolished, must be shown to be patently erroneous, whimsical, unjust etc.[3]

In overlooking the Secretary's two expressed reasons, the decision seems to imply between the lines that those two premises are invalid because the Secretary has no authority to buttress his disapproval with excuses not mentioned by Act No. 4183. If that were the majority's idea, then it would be pertinent to inquire: what is the use of giving the Secretary discretion to approve or not to approve if he may not, in disapproving invoke reasons not specified in the Act? If the Secretary of the Interior necessarily has to grant retirement to every employee separated on account of reorganization, he would be a mere rubber stamp.[4] May he not, for example, decline to sanction the employee's retirement upon the ground that the city or province is in bad financial shape, or that the employee has been found guilty of disloyalty to the Government? And yet these conditions are not written in the statute. Evidently the Legislature knew there were varying elements to be reckoned with in the granting of retirement; elements that could not readily be classified or enumerated or foreseen. Wherefore it allowed the Department Secretary to exercise his discretion, considering such various circumstances in connection with the purposes of the Act. The Act implicitly authorizes him to withhold assent when he has reasons therefor. Even if such reasons are not specified by the statute. Provided of course that such reasons are not simulated, whimsical etc.

To cite a well-known instance. For years after the approval of the Osmeña Retirement Act, the Governor-General who had the discretion to approve retirements under it, interpreted the law to apply mainly to Americans in the Philippine service. He declined generally to approve applications of Filipinos. That interpretation was not authorized in black and white by the statute itself. Yet in the exercise of his discretion he stuck to that interpretation, *nemine discrepante*. Why? Because he had discretion by law, and there were motives of sound policy behind his interpretation.

None can affirm that the Secretary's condition of "dispensability" of the position is without rational basis. He probably attempted to forestall a situation whereby one item is eliminated this year from the city budget and the employee allowed to draw pensions, and next year the same item is recreated on the ground of indispensability, with the result that for the same service the public treasury would be paying two persons at the same time. The respondent Secretary was following the principles of the Osmeña Retirement Act that also tried to avoid such a harmful contingency. (Act No. 2589 sec. 2.) On this ground alone—because petitioner has not proved his position is "dispensable"—the Secretary's refusal may equitably be sustained, and should be sustained.

But going back to the "reorganization". It will be observed that Act No. 4183 grants retirement to officers and employees who are separated from the service by reason of a reorganization, if the provincial board or municipal

council so provides and the Secretary of the Interior approves.

The Secretary of the Interior objected to petitioner's retirement for the reason, among others, that in his opinion said petitioner had not been separated from the service by a bona fide reorganization, "because the number of personnel in the office of the sheriff of Manila after the alleged reorganization was increased from 53 to 59, and the appropriation for salaries and wages was increased from P48,920 to P55,900, coupled with the fact that while the position of the appellant was eliminated, a new position of deputy sheriff as administrative officer was created with a salary of P1,220".

But the majority declares: "reorganization is not required to be one in which the appropriation for a given office should be reduced and it should be reasonably interpreted as allowing a reorganization that may carry more or less appropriation, depending upon the exigencies of the service".

Isn't that substituting our discretion or judgment for the discretion of the Secretary? I remember we said before that in matters of discretion, it is the discretion of the officer, not that of the court, that must govern.[5]

Nevertheless, yielding for the nonce to the majority's viewpoint, I would admit that the Secretary erred. But I would plead that error is not gross abuse of discretion, unless it is palpable. And the Secretary was not palpably wrong, for it is common knowledge that reorganizations are generally proposed to effect economy by consolidating activities or reducing the personnel and expenses[6] without impairing the efficiency of the service. That is what the Legislature normally desires in permitting reorganizations and granting gratuities to those employees that are necessarily eliminated. To those eased out the Legislature awards gratuities because the economies realized thru the reorganization make it feasible to defray, at least partially, the expenditures entailed by such gratuities. Wherefore, the Secretary was not absolutely mistaken in maintaining; no economy, no gratuity. Probably he was right. Certainly he committed no abuse, much less gross abuse.

Indeed, it would be contrary to public policy to interpret Act No. 4183 as permitting provincial boards or municipal councils under the name of "reorganization" to eliminate positions occupied by proteges who want to be retired, and retire them with gratuities, and in the same breath create similar or other positions to be handed out to friends or partisans with the resultant increase of the taxpayer's burden. The Secretary's obligation is to watch for and prevent such unwarranted imposition of double liabilities upon the people's treasury. And here the Secretary performed that duty, yet we coolly throw aside his Department's wholesome stand.

Central idea of the majority's position is the assumption that "the simple requirement provided by Act No. 4183, in order that a municipal officer or employee may be retired thereunder, is that he be separated from the service by reason of a reorganization".

Nego suppositum, as old philosophers would counter. There are other requirements. One is that the provincial board or municipal council shall grant the retirement. A third requirement is that the Secretary of the Interior shall approve it. And a fourth requirement—by the law itself—is "satisfactory services" rendered by the employee.

Anent this fourth requirement the decision mentions nothing about the quality of petitioner's services. I do not know that such services are presumed to be satisfactory. And I doubt that it is respondents' part to show the contrary, it being petitioner's burden to allege and prove all points necessary to demonstrate that he fulfills all the requirements and that he has consequently been unlawfully excluded from the enjoyment of a right. (Rule 67, section 3.)

Third. Since it is admitted that approval of the retirement is discretionary, the case of *Cabaluna vs. Ventura* 47 Phil. 165 is exactly on all fours. There Cabaluna, chief of police of a municipality of Iloilo was reinstated after a suspension from office, and the provincial governor recommended payment of his salary during the period of

suspension. The law provided that such payment could be made to municipal officials if approved by the Secretary of the Interior, in his discretion. That Department Head disapproved payment on the ground that the chief of police was not a municipal official. On a suit for mandamus, to compel payment of the salary this Court adjudged the Secretary to be in error because the chief of police was a municipal official. And yet it judiciously refrained from issuing the mandamus explaining:

"From what has been said it is manifest that the action taken by the respondent Secretary of the Interior in disapproving the order of Governor Montinola for the payment of the withheld salary was based upon an erroneous assumption as to the state of the law. But it does not follow that this court has jurisdiction to compel the Secretary of the Interior or his co-respondent, the Chief of the Executive Bureau to order the payment of said salary * * *".

"For aught we know there may be other reasons besides that expressed in the communication of the respondent Secretary of the Interior which would justify withholding the salary * * *. At any rate the law places the responsibility of deciding the matter on the administrative officer, and this court will not attempt to control him in the exercise of his official discretion." (Cabaluna vs. Ventura, 47 Phil., 168.)

It is hardly necessary to show how this holding fits the instant controversy, what with the Secretary's two un rebutted reasons, and the possibility that being dissatisfied with petitioner's services he tactfully kept silent about that fourth requirement.

Fourth. The Honorable Sotero Baluyot is no longer the Secretary of the Interior. No one has been appointed to fill his position. In fact the Department of the Interior has been abolished. Now then, whom are we ordering to approve the retirement?

Possibly the executive order reorganizing the Executive Departments designated another officer to assume the functions of the Department. Will the writ apply to this other officer, who has neither been impleaded nor afforded his day in court? Rule 3 section 18 is not, to my knowledge, obsolete.

For all the above considerations, I cannot agree to the issuance of the writ.

Feria, Padilla, and Jugo, JJ., concur.

[1] Viuda e Hijos de Zamora vs. Wright, 53 Phil., 613.

[2] I am reluctant to admit the proposition, in view of the positive provisions of Rule 67 speaking of "specific legal duty" and "right."

[3] And even that perhaps will not do. cf. Cabaluna vs. Ventura, 47 Phil., 165. The Secretary may have other reasons.

[4] The law could as well have eliminated the words "with the approval of the Secretary of the Interior."

[5] "It is his judgment that is to be exercised and not that of the court". Lamb vs. Phipps 22 Phil., 456; Blanco vs. Board of Medical Examiners 46 Phil., 190.

[6] Vide Act No. 4051.

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