

**CONCEPCION G. BRIONES, ACCOMPANIED BY HER HUSBAND
DEMOCRITO R. BRIONES, AND FAUSTINO O. ROSAGARAN,
PETITIONERS AND APPELLEES, VS. SERGIO OSMEÑA, JR., MAYOR OF
CEBU CITY, ETC., E...**

G. R. No. L-12536. September 24, 1958

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

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

This is an action for mandamus with damages, to declare the abolition of petitioners' positions void and to order the respondent City Mayor to reinstate them to their former positions.

Petitioner Concepcion G. Briones is a first grade civil service eligible. On March 4, 1937, she was appointed Clerk-Stenographer in the Office of the City Treasurer of Cebu and on August 5, 1937, she was transferred to the Office of the City Mayor, in the same capacity as Clerk- Stenographer, but with permanent status, since then she remained in service continuously, receiving repeated promotions and increases in salary.

Petitioner Faustino O. Rosagaran, on the other hand, is a second grade civil service eligible. He was employed in the Office of the City Mayor of Cebu since July, 1940, and promoted to Administrative Officer. In 1955, he was publicly declared and adjudged "Model Employee". (Annex "G", records, p. 22)

On January 5, 1956, the Municipal Board of the City of Cebu, acting upon the request of the respondent City Mayor embodied in his letter, dated January 4, 1956, passed Resolution No. 21, series of 1956, creating 35 positions in the City Mayor's office, and appropriating therefor the necessary amount for salaries for six months, the amounts of P28,000 for office equipment, P2,000 for office supplies and an additional amount of P10,000 for the City Mayor's discretionary fund.

The new positions were:

Private Secretary at P255 a month	P1,530.00
Assistant Private Secretary at P215 a month	P1,290.00
Two (2) Confidential Assistants at P200 each per month	P2,400.00
Two (2) Liaison Officers at P250 each per month	P3,000.00
One Driver at P175 per month	P1,050.00
One Driver at P120 per month	P 720.00
One Janitor at P120 per month	P 720.00
Two (2) Laborers at P120 each per month	P1,440.00

Two (2) Stenographers at P150 each per month.	P1,800.00
One Receptionist at P130 per month	P 780.00
Public Relations Officer at P300 per month	P1,800.00
Two Assistant Public Relations Officers at P150 each per month	P1,800.00
One Stenographer at P150 per month	P 900.00
One Laborer at P120 per month	P 720.00
One Janitor at P120 per month	P 720.00
Chief, Complaints and Investigation Division at P300 per month	P1,800.00
Two (2) Legal Assistants at P200 each per month	P2,400.00
One Laborer at P120 per month	P 720.00
One Janitor at P120 per month	P 720.00
Three (3) Informers at P150 each per month	P2,700.00
Seven (7) Informers at P120 each per month	P5,040.00
Total	

P34,050.00

On February 14, 1956, the Municipal Board in its Resolution No. 187, series of 1956, approved Ordinance No. 192, abolishing 15 positions in the City Mayor's office and 17 positions in the Office of the Municipal Board, or a total of 32 positions in both offices. Among the positions abolished in the Office of the City Mayor were those occupied by petitioners. (Exh. "H", pp. 23-24). The Ordinance was approved by the City Mayor on February 20, 1956.

Pursuant to said Ordinance No. 192, the City Mayor, on February 23, 1956, wrote separate letters to petitioners notifying them of the abolition of their positions and advising them of the termination of their services "effective at the close of business hours on March 15, 1956." (Exhs. I and 1-1, Records, pp. 25-26). In reply thereto, petitioners Briones and Rosagaran, respectively, wrote in March 1956, separate letters to the respondent City Mayor (1) acknowledging receipt his letters of separation, (2) protesting the abolition of their positions, and (3) informing him that they will not relinquish their positions "until otherwise determined by higher competent authorities or courts." (Exhs. J and J-1, Records, pp. 27-28).

As the respondent City Mayor persisted in terminating their services, added to the fact that the respondents City Treasurer and City Auditor refused to pay their salaries after March 16, 1956, petitioners filed the instant petition for reinstatement, back salaries, moral damages and attorney's fees.

The Court of First Instance of Cebu decided in favor of the petitioners and declared the abolition of their offices. null and void for lack of approval of the Department Head, as required by the Circular of April 3, 1954 and by Executive Order No. 506, series of 1934; consequently, it rendered judgment against defendants ordering them to reinstate the two petitioners to their former positions and to pay their back salaries as well as the costs of the suit. From this judgment the respondents appealed.

Appellants contend that the provisions of Executive Order No. 506, Series of 1934, as reiterated in the Provincial

Circular of April 3, 1954, requiring previous approval of the Department Head concerned before abolition of positions by local legislative bodies can take effect, is no longer operative since the Commonwealth, in view of the fact that the Constitution vests in the President of the Philippines (Art. VII, section 10 (1) only general supervision, and not control, over local governments. This contention is sustained by the recent doctrines of this Court, particularly *Rodriguez vs. Montinola* (94 Phil., 964; 50 Off. Gaz., [10] 4820) and *Dominguez vs. Pascual* (101 Phil., 31).

The case of *Pulutan vs. Dizon*, 99 Phil., 168; 52 Off. Gaz., 3047, invoked by the trial court, is of no application since that case referred to police officers, whose removal or suspension is governed by entirely different laws (Executive Order No. 175, Series 1938, and Republic Act 557). Moreover, in the *Pulutan* case, the validity and constitutionality of the Provincial Circular and of Executive Order No. 506, *supra*, was not in issue.

Nevertheless, in our opinion, the decision appealed from should be sustained, but on different grounds. Our review of the evidence on record convinced us that the reasons given for the abolition of the positions of the appellees (alleged to be economy and efficiency) are untrue, and constitute a mere subterfuge for the removal without cause of the said appellees, in violation of the security of Civil Service tenures as provided by the Constitution.

Considering that the appellees have served in the office of the Mayor of Cebu, since Commonwealth days, before the war; that their efficiency and merit has been attested by repeated and constant promotions and increases in salary; that petitioner Rosagaran was even proclaimed "Model Employee" as recently as 1955; and that just a short time before the abolition of their positions, the respondents had created for the same office of the City Mayor no less than 35 new positions calling for an outlay of P68,100 per annum, almost P6,000 a month, the excuse of promoting efficiency and economy is most transparent and unimpressive. A decent respect for the Civil Service provisions of our Constitution dictates that civil service eligibles, like petitioners herein who have rendered long and honorable service, should not be sacrificed in favor of non-eligibles given positions of recent creation, nor should they be left at the mercy of political changes. In *Pulutan vs. Dizon* (*supra*) we said:

"It is evident that the mayor could not legally remove the petitioner without cause, for being a member of the Civil Service, his tenure of office is protected by Section 4, Article XII of the Constitution, which says:

'No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.' The Committee on Civil Service of the Constitutional Convention, in recommending said provision said:

... The merit system will be ineffective if no safeguards are placed around the separation and removal of the public employees. The Committees' report requires that removal shall be made only for cause' and in the manner provided by law. This means that there should be bona fide reasons and action may be taken only after the employee shall have been given a fair hearing. This affords to public employees reasonable security of tenure." (Aruego, *The Framing of the Philippine Constitution*, 1949 Ed., p. 567)

This Court has always upheld these salutary principles. In our recent decision in *Gacho, et al. vs. Osmeña, etc. et al.*, 94 Phil., 208, we ruled that while abolition of the office does not imply removal of the incumbent, the rule is true only where the abolition is made in good faith; that the right to abolish can not be used to discharge employees in violation of the civil service law nor can it be exercised for personal or political reasons. That ruling is conclusive on the case now before us.

Appellants (respondents below) aver that the petition for mandamus should have been dismissed because the appellees have not exhausted the available administrative remedies. The Stipulation of Facts, however, expressly admitted paragraph 18 of the petition, alleging "that all administrative remedies have been exhausted by the petitioners for the speedy and ample protection of their rights." (Records, p. 53). The assignment of error is not

only groundless but improper.

The decision appealed from is affirmed, with costs against respondents in both instances. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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