

## **THE CITY OF CEBU, PETITIONER VS. JUDGE EDMUNDO S. PICCIO, OF THE COURT OF FIRST INSTANCE OF CEBU, AND ANACLETO CABALLERO, RESPONDENTS. THE CITY OF CEBU, PLAINTIFF AND APPELLANT ...**

*G.R. Nos. L-13012. and L-14876. December 31, 1960*

Ponente: PAREDES, J.

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### **PAREDES, J.:**

On April 11, 1955, Anacleto Caballero filed with the CFI of Cebu (Civil Case No. R-3941), a petition for Mandamus against the City Mayor, the Municipal Board, the City Treasurer and the City Auditor, all of Cebu City, for reinstatement to his former position of Caretaker, Operation of Cemeteries, and for the payment of his back salaries from April 15, 1953. On August 6, 1955, the Hon. Edmundo Piccio, rendered the following judgment:

"In view thereof, this Court hereby decides that this petition is in order and consequently orders for the reinstatement of petitioner Caballero to his former position from which he has been separated without benefit of an investigation and determination of sufficient cause, and was thus contrary to the existing law and regulations, such reinstatement to be effected within 30 days from receipt of this order plus the payment of his back salaries from April 15, 1953."

No appeal had been taken by the respondents therein and the above judgment became final. Upon motion of petitioner therein (Caballero), a writ of execution was issued. Pursuant to the writ, the municipal board of Cebu City passed a resolution, appropriating the amount of P3,224.00 for the payment of the back salaries of Caballero. Respondent City Mayor Jose V. Rodriguez approved the resolution and the amount was paid to Caballero.

Caballero not having been reinstated, notwithstanding the abolition of his position, Judge Piccio issued an order dated August 27, 1958, directing the municipal board to recreate Caballero's position as Caretaker, with compensation of P4.00 per day. As the municipal board did not comply with the order, on September 11, 1957, Caballero filed a motion, asking for an order to compel the members of the board to do so. The City Mayor, members of the board, the treasurer and the Auditor, answering the motion for compliance, alleged that the City of Cebu, not having been made a party to the case (Mandamus), compulsion would be illegal and unwarranted under the facts obtaining.

The lower court entered, on October 11, 1957, the following Order:

"In view thereof, the Court, amending its original order of reinstatement by excluding therefrom petitioner's right to reimbursement of his back salaries from June 30, 1955 to the date of his reinstatement, hereby directs that its order of August 28, 1957, directing respondent Municipal Board to recreate the petitioner's position as caretaker of the cemetery of Cebu, Cebu City, with compensation at the rate of P4.00 a day including Sundays and holidays be carried out within 5 days from receipt of this order, or the Court shall avail itself of its coercive powers to enforce said directive until it is obeyed."

The City of Cebu took exception from the above order and on October 18, 1957, filed a petition for Certiorari with this Court (G.R. No. L-13012), to restrain Caballero and Judge Piccio from executing the amended judgment.

Before the termination of the Mandamus proceedings, on October 2, 1957, the City of Cebu, claiming that the payment of the sum of P3,224.00 to Caballero was wrongful and illegal, since it was not a party to the case, instituted an action (Civil Case No. R-5243) against said Caballero, for the recovery of the same amount, plus P25,000.00 by way of compensatory, moral and exemplary damages. Instead of answering, Caballero on October 29, 1957, moved to dismiss the complaint for alleged failure to state a cause of action. To buttress his motion, Caballero cited a number of cases decided by this Court, ordering the payment of back salaries of employees illegally ousted, even though the municipality and/or city concerned was not impleaded. (*Mission et al. vs. Del Rosario, et al.*, 94 Phil., 483; 50 Off. Gaz., No. 4, 1571; *Uy vs. Rodriguez* 95 Phil., 493; 50 Off. Gaz., No. 8, 3574; *Rodriguez vs. Del Rosario, et al.*, 93 Phil., 1070; 49 Off. Gaz., [12] 5427; *Manuel vs. De la Fuente*, 92 Phil., 302; 48 Off. Gaz., No. 11, 4829-32). An answer to the Motion to Dismiss was presented by the City of Cebu on October 30, 1957, invoking Section 5 of the Charter for the said City, exempting the City Government from any liability for damages or injuries to person or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provisions of the Charter, or any other law or ordinance, or from negligence of the said officials and/or officers while enforcing or attempting to enforce the said provisions. Cited in support of this Answer were cases decided by this Court, dismissing them for failure to include the municipal corporations concerned (*Cabanes, et al. vs. Rodriguez, et al.*, G.R. No. L-9799, May 31, 1957; *Cabo Kho vs. Rodriguez, et al.*, G.R. No. L-9032, Sept. 28, 1957; *City of Bacolod vs. Enriguez, et al.*, 101 Phil., 644; 55 Off. Gaz., [51] 10545; *Angara vs. Gorospe*, 101 Phil., 79; 53 Off. Gaz. [14] 4480).

On December 3, 1957, the CFI of Cebu, presided by Judge Rodriguez entered an order dismissing the complaint. The City of Cebu appealed the order directly to this Court, (now G. R. No. L-14876), claiming that the lower court erred; (1) in overlooking the fact that the City of Cebu was never made a party in the mandamus case (Civil No. R-3941), so that it could not be bound by the judgment therein entered; (2) in ignoring the provisions of section 5 of the Charter of the City of Cebu, as interpreted and applied in the case of *Faunillan vs. Del Rosario, et al*, 99 Phil., 758; Off. Gaz. [31] 5815; and (3) in dismissing the case.

The issues involved in the petition for certiorari and the appeal are identical. Both cases pose the following questions: (1) Does the non-inclusion of the City of Cebu in the Mandamus case, make the payment of the back salaries of CabaUero wrongful or illegal and not binding on said City; and (2) Is the dismissal of the recovery case, well taken?

While the petition is designated as certiorari, there is, however, no allegation therein regarding the lack or excess of jurisdiction or grave abuse of discretion, committed by the respondent court which constitute precisely the basis of this kind of action. Furthermore, the appropriate remedy against the decision and/or orders complained of is appeal, if proper and timely, which petitioners herein did not interpose.

It seems that the complaint to refund is predicated upon the following provisions of the Civil Code:

"Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

Considering that the indispensable Requisites of tins juridical relation, known as *solutio indebiti* are (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact (*Hoskyn vs. The Goodyear Tire, etc., CA*, 40 Off. Gaz., Supp. 11, 245; *Velez vs. Balzarza*, 73 Phil., 630), we are of the belief that the complaint was correctly dismissed. It is fully established that Caballero had the

perfect right to demand for the payment of his back salaries during his illegal dismissal, that the sum of P3,224.00 was paid to Caballero by virtue of a writ of execution lawfully issued; and that the payment was not made through mistake. On this score, alone, it would appear manifest that the complaint does not state a cause of action.

The question of whether the City of Cebu was a party or not in the mandamus case becomes unimportant, as it is immaterial. It is true that in the mandamus case, only the City Mayor, the municipal Board, the City Treasurer and the City Auditor, of Cebu City were included in the order of the execution of the judgment, but we have declared that a municipal corporation, whether included or not in the complaint for the recovery of back salaries due to wrongful removal from office, is liable. In the case of *Mangubat vs. Osmeña*, G.R. No. L-12837, April 30, 1959, a ruling was enunciated, thus:

"The necessity of making the City a respondent herein is based upon its right to defend itself, as demanded by the requirements of due process. However, these requirements have been substantially complied with in the case at bar. The parties herein have handled the case, and the same was heard and decided in the lower court, as if the City had been named respondent in the pleadings. The officer required by law to cause to be defended all suits against the City', namely, its Mayor, (Sec. 8, Commonwealth Act No. 58) , is respondent in his official capacity. The officer charged with the duty to represent the City 'in all civil cases wherein the City \* \* \* is a party'—to wit, its city attorney (Sec. 17, Commonwealth Act No. 58)—counsel for respondents herein. In addition thereto, the auditor, the treasurer, and even the municipal board of the City of Cebu, are parties respondents.

There is no reason to believe that these officers and the City Mayor would have exerted greater effort, than those already displayed by them, in protecting the interests of the City of Cebu, were it formally a respondent therein. Indeed, it is only logical to expect that, having been individually named as respondents, said officers, must have taken as much concern if not more, in warding off petitioner's claim. Under the foregoing circumstances, we would be subordinating the substance to the form if the action for mandamus—insofar as the claim for back salaries is concerned—were, either dismissed, or remanded to the lower court, for the corresponding amendment of the pleading and a repetition of the proceedings held for the last five (5) years, in order to reach the same decision rendered by the lower court and the same conclusions set forth in this decision, as regards the substantive rights of the parties. It is our considered opinion, therefore, that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleadings had been made." (*Italics supplied*).

which was reiterated in the case of *Discanso, et al. vs. Gatmaitan, et al.*, 109 Phil., 918; 60 Off. Gaz., [42] 6786.

We find no plausible reason for disregarding the above ruling on a procedural matter, knowing as we do, that after all, the obligation to pay the back salary of Caballero, cannot be eluded and that the officer concerned in the City of Cebu will have to pay it anyhow, in his official capacity. When a judgment is rendered against an officer of a municipal corporation who sues or is sued in his official capacity, the judgment is binding upon the corporation, upon the other officers of the municipal corporation who represent the same interest and the effect of judgment against a municipal officer is not lost by a change in the occupant of the office. (38 Am. Jur. sec. 727, pp. 431-32). We are not unmindful of the pronouncements in the *Faunillan* case (*supra*) but the same is evidently predicated upon a different set of facts. Furthermore, it would seem that the City of Cebu in the case at bar, had already waived the rights and benefits afforded by section 5 of the Cebu City Charter, by and through the acts of its agents, the officers-respondents in the mandamus case, by appropriating funds and paying; Caballero with them. The lawful act of these officers within the scope of their authority is deemed the act of the principal, the City of Cebu.

In view hereof, the petition for certiorari is dismissed for lack of merits and the order of dismissal of the

complaint, object of the appeal, is affirmed. Costs is taxed against the petitioners and the appellant City of Cebu, in both instances and in both cases. So ordered.

Bengzon, Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

In L-13012, petition dismissed and in L-14876, order affirmed.

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