

**ANTERO CANONIGO, FRANCISCO ARTAJO, AND BEATA MORILAO,
PETITIONERS-APPELLEES, VS. HILARION RAMIRO, IMMEDIATE
PAST CITY MAYOR; IMMEDIATE PAST MUNICIPAL BOARD,
PRESIDED BY THEN VIC...**

G.R. No. L-26316. January 30, 1970

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9f42ed3351ed/>

BARREDO, J.:

Appeal on pure questions of law from the decision of the Court of first Instance of Misamis Occidental in its Special Civil Case No. 2288 (for mandamus with preliminary mandatory injunction), ordering therein respondents (herein appellants) Municipal Board and Officials of Ozamiz City to pay back salaries to therein petitioners (herein appellees) Antero Canonigo, Beata Morilao and Francisco Artajo, and to reinstate the last named petitioner to the office previously held by him before the termination of his services occasioned by the abolition of the said office by the Municipal Board referred to.

The antecedent facts, as set forth in the pertinent portions of the decision of the court a quo appealed from are as follows:

"On August 10, 1960, Antero Canonigo, Beata Morilao and Francisco Artajo filed this petition for mandamus with preliminary injunction against the respondents officials of the City of Ozamiz praying that they be reinstated to the position of field clerks and market inspector in the office of the City Treasurer. On January 18, 1961, the petition was amended to in-clude moral and exemplary damages in the action. On September 11, 1965, the petition was further amended to include the present City Officials and the City Government in view of the elections held in the year 1963.

"From the admissions of the parties in their pleadings, the Court gathers that Antero Canonigo was, on July 1, 1959, appointed by then City Mayor Angel Medina, field clerk in the office of the City Treasurer with compensation at the rate of P1,440.00 per annum, effective July 1, 1959. As Canonigo is a civil service eligible, his previous probational appointment was made permanent. This appointment was duly approved by the Commissioner of Civil Service. On September 1, 1959, Mr. Canonigo was extended a promotional appointment to same position with an increase in salary from P1,440.00 to P1,500.00 per annum. This appointment was likewise approved by the Commissioner of Civil Service.

"On August 17, 1959, then Mayor Angel Medina appointed Beata Morilao as regular field clerk in the office of the City Treasurer with compensation at the rate of P1,440.00 per an-num, effective August 24, 1959. As Morilao is also a civil service eligible, her appointment was duly approved by the Commissioner of Civil Service.

"On September 1, 1959, then Mayor Angel Medina appointed Francisco Artajo as market inspector in the office of the City Treasurer with compensation at the rate of P1,800.00 per annum, effective September 1, 1959. This was an increase in salary from P1,560.00. Although the eligibility of Artajo was that of patrolman, the Commissioner of Civil Service approved his appointment as such market inspector. Apparently, the

Commissioner of Civil Service considered his patrolman eligibility applicable to the position of market inspector.

"In the general elections of 1959, Mayor Angel Medina was defeated by Mayor Hilarion A. Ramiro. Upon Assumption of office, Mayor Ramiro, through his Secretary, sent on January 4, 1960, similarly worded letters each to Antero Canonigo, Beata Morilao and Francisco Artajo, which read:

'In line with the policy of the new administration and in order to give a free hand to the undersigned, you are required to tender your courtesy resignation today, January 4, 1960.'

"As the above three persons did not resign, respondent City Treasurer Maximo Lago, on February 4, 1960, sent each to Antero Canonigo, Beata Morilao and Francisco Artajo similarly worded letters which read:

'In the official conversation made by me and the Honorable the City Mayor of Ozamiz City, he touched on the subject of the resignation which you promised to tender since the time of your conference, but until this writing you still have failed to do so.

'You are, therefore, requested to act immediately on your promise so that the gentlemen's agreement will be fulfilled.

'Please answer this letter as early as possible so that the Honorable the City Mayor will be informed about it.'

"On February 4, 1960, Beata Morilao wrote to the City Mayor which reads:

'In connection with your letter of even date I regret to inform you that I am not yet in a position to tender my resignation. As now, I am still looking for a position in other offices where I can transfer. As soon as I can find one, will resign immediately.'

"On February 5, 1960, Antero Canonigo wrote to the City Treasurer which reads:

'In reply to your letter dated February 4, 1960, please be informed that I cannot nor intend to resign because I am the only bread earner of my poor family. However, I am looking for another position and should I find one, I would make up my mind immediately.'

"On May 3, 1960, the Municipal Board of the City of Ozamiz passed Resolution No. 282, abolishing the positions of three field clerks and one market inspector in the office of the City Treasurer. On May 5, 1960, Mayor Ramiro sent similarly worded communications each to Antero Canonigo, Beata Morilao and Constancia Yting which read:

'Please be informed that your services as Field Clerk in the Treasurer's Office, this City, terminate at the close of business hours today, May 5, 1960, in view of Resolution No. 282, current series, of the Honorable Municipal Board, abolishing your position.

'Please acknowledge receipt hereof.'

"Mayor Ramiro also sent a similarly worded letter to Artajo. Hence, this petition filed by Canonigo, Morilao and Artajo. Constancia Yting filed a separate civil action docketed as Special Civil Case No. 2319 of this Court.

"The records further show that during the period from January 13 to July 20, 1960, the Municipal Board created various new positions in the City Government and appropriated several thousand pesos for improvements and salaries of officials and employees of the City (Exhibits 'L', 'L-1' to 'L-32').

"Antero Canonigo has been able to secure an employment as public school teacher from August 1, 1963, up to the present, while Beata Morilao has been employed in the City Auditor's Office effective January 9, 1961.

"Francisco Artajo was unable to secure any employment up to the present.

"From the above, it is clear that in view of the refusal of the three civil service eligibles to resign, their respective positions were abolished by the Municipal Board. At the time of the abolition, they were holding permanent appointments.'

Upon the tactual setting thus narrated, the court be-low rendered judgment on April 12, 1966, in favor of the petitioners, to wit:

"WHEREFORE, judgment is hereby rendered ordering the respondents concerned, to reinstate petitioner Francisco Artajo to the position of Market Inspector in the office of the City Treasurer previously held by him before his services were terminated on May 5, 1960, with back salaries. Likewise, said respondents are further ordered to pay the back salaries of Antero Canonigo during the period from May 6, 1960 to July 31, 1963, and Beata Morilao from May 6, 1960 to January 8, 1961, all dates inclusive.

"The prayer for moral and exemplary damages is hereby dismissed."

The foregoing judgment is now here assailed on appeal, appellants contending:

"I. THAT THE LOWER COURT ERRED IN CONSIDERING THAT THE CITY OF OZAMIZ CAN BE COMPELLED BY MANDAMUS TO RECREATE POSITIONS WHICH IT HAD ABOLISHED.

"II. THAT THE LOWER COURT ERRED IN CONSIDERING THE APPOINTMENTS OF THE PETITIONERS AS PERMANENT.

"III. THAT THE LOWER COURT ERRED IN CONSIDERING ABOLITION OF POSITION A DIS-MISSAL OR REMOVAL OF AN EMPLOYEE.

"IV. THAT THE LOWER COURT ERRED IN CONSIDERING THAT THE ABOLITION OF THE POSITIONS WAS DONE IN BAD FAITH.

"V. THAT THE DECISION OF THE LOWER COURT IS NOT SUPPORTED BY LAW."

For a more logical discussion, these assigned errors will be taken up in a different order.

The position of appellants under the second assignment of error is that the appointments of appellees here involved are not permanent but conditional, for the reason that they were all approved by the Commissioner of Civil Service "subject to the availability of funds". We find no merit in this claim. Appellees having served the government already for a long period of time under their respective appointments, the condition adverted to cannot now affect-the nature of said appointments which, as found by the trial court upon the evidence, are permanent. Indeed, viewed as a condition precedent, the clause or proviso "subject to the availability of funds" has long ceased to have any significance. Neither is it effective as a condition subsequent attached to the appointments in this case every appointment to a position in the civil service presupposes the existence of a corresponding item or fund in the budget - be it national, provincial, city or municipal -from which the salary of the appointee is to be drawn; and considering that at the time the services of herein appellees were terminated, the fiscal year in which their appointments were extended had not ended, it may not be validly argued that the funds for their positions were then no longer available. Moreover, it may be stated by way of a general proposition that all appointments in the civil service may be deemed subject to such condition subsequent; and to follow herein appellants' line of reasoning would make all appointments in the civil service conditional forever, never to acquire the status of permanence.

We agree with appellants, of course, in their conten-tion under the third assignment of error, that there should be a distinction between removal from an office, on the one hand, and abolition of the office itself, on the other. A

removal implies that the office from which an employee had been ousted before the expiration of his term subsists after the ouster, unlike in the case of abolition of an office which necessarily extinguishes the right thereto of its incumbent by reason of the consequent non-existence of the office that had been abolished. In the latter case, the constitutional mandate to the effect that "no officer or employee in the civil service shall be re-moved or suspended except for cause as provided by law" is not in point, for there is neither removal nor suspension of the incumbent but an abolition of his former office.[1] Be that as it may, We are constrained to hold, under the circumstances of this case, that the ouster of herein appellees, while appearing to have been occasioned by the abolition of their posts, in reality constitutes removal from office. The power to abolish an office is not absolute; it is subject to the limitation that the same be exercised in good faith in order to be valid.

"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*, 94 Phil. 208, 103 Phil. 837; *Gonzales vs. Osmeña*, L-15901, 30 Dec. 1961; *Urgelio vs. Osmeña*, 21 October 1963; *Ocampo vs. Duque*, 30 April 1966, 16 SC Rep. Anno. 962; *Abanilla vs. Ticao*, 26 July 1966, 17 SC Rep. Anno. 652; *Arao vs. Luspo*, 21 July 1967, 20 SC Rep. Anno. 722)."[2]

This brings us to herein appellants' fourth assigned error that the lower court erred in considering that the abolition of appellees' positions was done in bad faith. We really cannot see our way clear to why the appellant city officials concerned, barely three (3) days after assumption in office, should require such minor employees of the city as appellees, to tender their "courtesy resignations" for the alleged purpose of giving the new administration "a free hand". And apropos to this inquiry is the seeming persistence with which said appellants required appellees to resign their positions, it appearing that the same subject matter was subsequently brought out again in a conference between them, and then followed with a letter-reminder of the former city treasurer. We are satisfied that these circumstances, coupled with the finding of the court below that soon after the abolition of the positions in question "the Municipal Board created various new positions in the City Government and appropriated several thousand pesos for improvements and salaries of officials and employees," do not bespeak of good faith on the part of appellants.

Appellants ask under the first assignment of error the following question: Can the City of Ozamiz be compelled by mandamus to recreate positions which it had abolished? They take the negative side of the question and come up with the following argument:

"It is very clear that the proceeding for mandamus applies only to compel performance of a ministerial act. The duty must be clear and specific. It does not apply to control or review nor mal exercise of judgment or discretion. In this case the act of creating positions or abolishing them which it has created involves the exercise of power and discretion. And to recreate a position already abolished also requires sound discretion to do so. Therefore, the City of Ozamiz cannot be compelled to restore the petitioners' item in the budget."

The above argument, while quite logical is off tangent in this case. It is not applicable here where, as We have earlier intimated, the attempted abolition of the offices of appellees by appellants, is null, void and without legal effect. In legal contemplation then, the said offices still exist, and mandamus is a proper remedy to compel herein appellants not only to make the necessary appropriations needed for the reimbursement of the salaries of appellees who have in the meanwhile found other employment corresponding to the period from their dismissal to the date of such new employment but also to reinstate one of said appellees who had not been reemployed since his separation from the service.

"We, therefore, declare, and so hold, that the abolition of the positions of the petitioners x x x pursuant to resolution No. 598 which was approved by the respondents x x x x, is illegal. We hold that the respondents

have unlawfully excluded the petitioners from the enjoyment of a right or office to which they are entitled. We finally hold that in failing to include item or items in the 1964-1965 annual budget for the province of Pangasinan, and/or refusing to approve a supplemental budget for the fiscal year 1964-1965 including item or items, to cover appropriations for the salaries of the petitioners, the respondents have unlawfully failed or neglected the performance of an act which the law enjoins as a duty resulting from office.

"In view of the foregoing, the writ of mandamus prayed for by the petitioners should be, as it is hereby granted. The respondents, as members of the provincial board of Pangasinan, are commanded to appropriate, without unnecessary delay, the amounts necessary for the salaries of petitioners, as stated in this decision, for the fiscal year 1964-1965 and for the fiscal years thereafter, x x x together with such amounts as may be necessary to pay the contribution of the province of Pangasinan to the GSIS in connection with the insurance and retirement privileges of the petitioners. No costs."[3]

Applying the principle enunciated in the above-cited cases, it is clear that mandamus is proper in this case.

Finally, We find no merit in herein appellant Ozamiz City's claim that only the appellant officials (excluding it) should be held liable. We have already held in a number of cases that municipal corporations may be held liable for the back pay or wages of employees or laborers illegally separated from the service, including those involving primarily governmental functions, such as those of policemen.[4] On the authority also of these cases, We rule out appellants' pretense that there is no law authorizing the payment of back salaries to employees whose positions have been abolished under circumstances similar to those here present.

WHEREFORE, the decision appealed from is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.

[1] *Manalang vs. Quitoriano, et al.*, 94 Phil. 903. 907.

[2] *Cruz, et al. vs. Primicias, Jr., etc., et al.*, L-28573, June 13, 1968, 23 SCRA 998, 1003.

[3] *Ocampo, et al. vs. Duque, et al.*, L-23812, April 23, 1966, 16 SCRA 962, 977. See also *Cruz, et al. vs. Primicias, Jr., etc., et al.*, *supra*.

[4] See *Guillergan, et al. vs. Ganzon, etc., et al.*, L-20818, May 25, 1966, 17 SCRA 257, 260, citing *Mission vs. Del Rosario*, 50 Off. Gaz., 1571; *Abella vs. Rodriguez*, 50 Off. Gaz. 3039; *Uy vs. Rodriguez*, 50 Off. Gaz. 3574; *People vs. Bautista*, 50 Off. Gaz. 5286; *Faunillan vs. Del Rosario*, 52 Off. Gaz., 5815; *Gacho vs. Osmeña*, L-10989; May 28, 1958; *Briones vs. Osmeña*, L-12536, September 24, 1958; *Noromor vs. The Municipality of Oras*, L-18637, February 28, 1963; *Cuñado vs. Gamus*, and *Vale-cera vs. Gamus*, L-16782-83, May 30, 1964; *Urgelio vs. Osmeña*, L-14908, February 28, 1964; *Tañada vs. Legaspi*, L-22537, March 31, 1965; and *Gabutas vs. Castellanes*, L-17323, June 23, 1965.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.