

ATTY. ROMEO S. PEREZ, PETITIONER, VS. HON. JUDGE CARLOS ABIERA, RESPONDENT.*A.C. No. 223-J. June 11, 1975*

Ponente: MUNOZ PALMA, J.

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For "grave misconduct, gross dishonesty and serious inefficiency" unbecoming of a judge, Atty. Romeo S. Perez filed before this Court on September 23, 1971, this administrative charge against Hon. Judge Carlos Abiera, then presiding Judge of Branch VI of the Court of First Instance of Negros Occidental. On September 27 of the same year, Judge Abiera retired from the service upon reaching the compulsory retirement age of seventy.

Notwithstanding respondent's retirement, the Court required him to answer the complaint, after which the matter was referred to then Justice Guillermo S. Santos of the Court of Appeals for investigation, report, and recommendation.

The findings of the Honorable Investigator follow:

On December 29, 1966, Civil Case No. 347 entitled, "Resurreccion de Asis vs. Rodolfo Alvarez, et al." for Specific Performance of Contract with Injunction was filed with the Court of First Instance of Negros Occidental and was assigned to Branch VI then presided by respondent Judge Abiera.[1] Atty. Romeo Perez who is now the complainant in this administrative case was the counsel for the defendants Alvarez. On December 31, 1966, upon motion of plaintiff de Asis, Judge Abiera issued ex-parte a writ of preliminary injunction against the defendants.[2] On February 14, 1968, Atty. Perez filed a motion to dissolve the writ of preliminary injunction which, however, was denied by the Judge in his order dated August 29, 1968.[3] On October 9, 1968, Atty. Perez filed a motion for reconsideration of said order requesting at the same time that his motion be submitted for resolution on October 21, 1968.[4]

Because there was no action on his motion for reconsideration, Atty. Perez filed on March 5, 1969, a motion to resolve the same.[5] Still, Judge Abiera did not take any action. On May 4, 1971, complainant filed his second motion to resolve but respondent Judge remained adamant.[6] Aside from these two motions, Atty. Perez had occasion several times to talk with the Judge and call his attention to the pending motion but all his efforts proved futile.[7]

On August 26, 1971, Atty. Perez filed with the Court of Appeals a petition for certiorari and mandamus[8] praying among other things that "the order of respondent Judge dated December 31, 1966 (Annex 'D') be declared null and void" and that "the Writ of Preliminary Injunction (Annex 'E') be ordered dissolved."

On September 10, 1971, during the pendency of the above-mentioned petition for certiorari respondent finally issued an order denying the motion for reconsideration in question.[9]

Acting on the Petition for certiorari and mandamus, the Court of Appeals in its decision of July 11, 1972, granted the relief prayed for after it found that respondent Judge Abiera gravely abused his discretion when he hastily

granted a writ of preliminary injunction without prior notice to the defendants in the case.[10]

Briefly stated, the present charge is concerned with Judge Abiera's failure for a period of three years to resolve a motion for reconsideration, and the collection of his salary for that period of time despite the pendency of said motion, all in flagrant violation of Section 5 of the Judiciary Act as amended which reads:

"Sec. 5. Judge's certificate as to work completed. — District judges, judges of city courts, and municipal judges shall certify on their applications for leave, and upon their salary vouchers presented by them for payment, or upon the payrolls upon which their salaries are paid, that all special proceedings, applications, petitions, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of ninety days or more have been determined and decided on or before the date of making the certificate, and no leave shall be granted and no salary shall be paid without such certificate."

For his defense, respondent claims (1) that this Court is without jurisdiction to proceed and resolve the present charge as he has retired from the service; and (2) that if he failed to resolve the alleged motion for reconsideration it was due to oversight, his poor state of health, and the fact that he did not consider the motion as submitted for resolution because the stenographic notes had not as yet been transcribed.

On the question of jurisdiction, respondent asserts that because he retired from the government service having reached the compulsory retirement age of 70, the Court lost jurisdiction to take disciplinary action against him and perforce has to dismiss the case because the relief prayed for in the complaint that he be declared "unworthy to and unfit for the position as judge of the Court of First Instance, ordering his dishonorable discharge from the service with prejudice to employment of similar office or trust, . ." is unnecessary considering that by reason of his age, he is in fact barred or disqualified to be appointed to any other office in the government service, and as regards the prayer that if found guilty "respondent be declared to have forfeited all retirement benefits and emoluments said respondent Judge may have been entitled to by reason of his position or office", such forfeiture is but an accessory to a principal penalty, like dismissal, and may not be imposed in this administrative proceeding for to deprive him of his retirement benefits is tantamount to divesting him of his property without due process. Respondent cites in his favor the case of *Ambrosio Diamalon, complainant, vs. Hon. Jesus Quintillan, respondent*, Adm. Case No. 116, August 29, 1969,[11] where the Court dismissed the administrative complaint against Judge Quintillan of the Court of First Instance of Cotabato and held:

"In the light of the above, the petition for dismissal must be granted. There is no need to inquire further into the charge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the government and there being no doubt as to the resignation of the respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for."

It was not the intent of the Court in the case of Quintillan to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case.[11-A] The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the

law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

In Quintillan, several factors contributed to the dismissal of the administrative complaint. Respondent was Judge of the Court of First Instance of Cotabato and was charged by Ambrosio Diamalon with serious misconduct in office for having issued a warrant of arrest against him and causing his unlawful detention without observing the requirements of due process. When asked to answer the complaint against him, Judge Quintillan explained that

"... he was of the sincere belief and opinion that the presence of the accused before the issuance of the warrant of arrest was not necessary as Rule No. 112, Section 13 provides that the undersigned may simultaneously conduct the preliminary examination and preliminary investigation in cases that are directly filed with him. While it is true that the said section provides that the procedure shall be in the manner provided for municipal judges, yet the preceding sections provide that in cases of preliminary examination for the purpose of the issuance of the warrant of arrest, the presence of the accused is not necessary. Therefore, if the preliminary examination by the municipal judge is for the purpose of the issuance of the warrant of arrest, the presence of the accused is not necessary, and the judge of the Court of First Instance is authorized to conduct simultaneously, upon the filing of the case before him, the preliminary examination and preliminary investigation, in the honest opinion of the undersigned the warrant of arrest may be issued without the presence of the accused. ..." (supra, 348)

On the basis of his answer, respondent prayed that the complaint be dismissed. In a Resolution of August 30, 1967, the case was considered submitted for decision. On August 7, 1969, an urgent petition for dismissal was filed by respondent not only because there was no valid cause of action against him but also because he had already resigned from his position on August 12, 1967, his resignation was accepted by the President of the Philippines effective August 31, 1967, and his application for his retirement gratuity could not be favorably acted upon in view of the pendency of the administrative case. The petition for dismissal further stated that respondent Judge "has been sick for sometime already and is now very seriously ill and is presently confined at the Brokenshire Memorial Hospital at Davao City so that it would be to the best interest of simple and Christian justice that the above-entitled case be dismissed and/or decided as soon as possible to facilitate the processing of respondent's application for Retirement Gratuity." All those circumstances were noted by the Court and such justified the dismissal of the administrative complaint.

In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.

Coming now to respondent Judge Abiera, there can be no question that there was undue delay on his part in resolving the motion for reconsideration of complainant, Atty. Perez. As narrated earlier, said motion was filed as early as October 9, 1968, and was considered submitted for resolution on October 21 of the same year. The motion was resolved only on September 10, 1971, or after a period of almost three years, notwithstanding the fact that Atty. Perez had filed at least two motions to resolve and even went to the extent of verbally reminding respondent of his pending motion. What compounded the situation was that respondent continued to receive his salary as presiding Judge of Branch VI of the Court of First Instance of Negros Occidental and made applications for vacation and sick leaves during that three-year period certifying that he had no matters or incidents pending in his court for more than ninety days, all in violation of Section 5 of the Judiciary Act quoted above.[12] As

correctly stated by the Honorable Investigating Justice, respondent made untruthful statements in his salary vouchers and leave certificates and for this he cannot escape responsibility in this administrative proceeding. Respondent's claim that his failure to resolve the aforesaid motion for reconsideration before September 10, 1971, was due to oversight and poor health can only serve to mitigate his culpability but not to exonerate him completely from the charge.

The Investigating Justice recommends forfeiture of respondent's retirement benefits. Respondent asserts, however, that that would be a deprivation of his property without due process.

It may be well to state here that before respondent may be entitled to retirement gratuity, several requisites must concur. First, he must have paid the premiums required under Section 5 of Republic Act No. 660 known as the Government Service Act. Second, he must have reached the compulsory age of retirement under Section 1 of Republic Act No. 910 as amended by Republic Act No. 2614 and 5095. Third, he must have rendered satisfactory and meritorious service to the government, for a grant of retirement benefits is not only an act of generosity or liberality on the part of the government but is equally a compensation and reward for satisfactory, faithful, meritorious and valuable service rendered to the latter. In the case at bar, although the first two requisites are present the third, however, is absent.

PREMISES CONSIDERED, We find respondent Judge Carlos Abiera GUILTY of serious misconduct in office. Considering the length of service rendered by respondent in different offices of the government since 1922 and in the Judiciary since 1962, and his claim of poor health at the time the motion for reconsideration in question was pending before him which are sufficient to mitigate his liability, the Court hereby imposes upon respondent a FINE equivalent to his three (3) months' salary as Judge of the Court of First Instance, deductible from whatever retirement benefits he is entitled to and will receive from the government.

SO ORDERED.

Makalintal, C.J., Teehankee, Barredo, Makasiar, Antonio, Esguerra, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Castro, J., concurs in the result.

Fernando, J., took no part.

[1] Complaint, Annex A, p. 7, rollo.

[2] Annex B, p. 20, Ibid.

[3] Annexes D & H, pp. 33, 44, Ibid.

[4] Annex G, p. 46, Ibid.

[5] Annex H, p. 57. Ibid.

[6] Annex I, p. 59, Ibid.

[7] T.s.n. Sept. 6, 1972, pp. 38, 42.

[8] Annex J, p. 61, Ibid.

[9] See p. 7, Investigator, Report p. 367, Ibid.

[10] Annex A, p. 373, Ibid.

[11] 29 SCRA 347, per Fernando, J.

[11-A] In *Reñeses vs. Tomines*, Adm. Mat. No. 518-MJ, May 28, 1974, although respondent was compulsorily retired, the complaint was ordered reinvestigated in order to guide the government in acting upon his application for benefits. See also *Hermosa vs. Paraiso*, Adm. Case No. P-189, February 14, 1975.

[12] See Exhs. B, B-1 to B-30, pp. 186 to 217, rollo.

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