

THE SECRETARY OF JUSTICE, COMPLAINANT, VS. JUDGE JOSE C. BORROMELO OF THE COURT OF FIRST INSTANCE OF CEBU, RESPONDENT.

A.M. No. 222-J. June 20, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint against respondent judge, Honorable Jose C. Borrromeo, of the Court of First Instance of Cebu for serious misconduct and gross inefficiency.

The specific nature of this case and its related circumstances are more or less fully stated in the Memorandum of the Acting Judicial Consultant dated January 31, 1977 as follows:

"Re: Adm. Matter No. 222-CFI

Sec. of Justice Vicente Abad Santos

vs. Hon. Jose Borrromeo of CFI Cebu

"The Secretary of Justice indicted Responder for Serious Misconduct and Gross Inefficiency allegedly committed as follows:

"That respondent failed to decide within the reglementary period the following cases:"

A. CRIMINAL CASES:

1. No. V-12498 - For Slight Oral Defamation.
2. No. CU-184 – For Slight Oral Defamation.
3. No. V-13042 - For Serious Physical Injuries Thru Reckless Imprudence
4. No. CU-236 - For Malicious Mischief

"B. CIVIL CASES:

5. No. R-9208 - Manuel Hernaez et al., vs. Andres Nadela
6. No. R-11874 - Epifanio Mendoza et al., vs. Pedro Gutang et al.
7. No. R-11871 - First Insular Bank of Cebu vs. Julia S. Yap.

"That Respondent falsely certified that all cases, since their submission for decision ninety days theretofore, had been decided on or before the date of said certifications of service for the months of December 1970, January, February, March, April and May 1971.

"That Respondent approved the monthly reports submitted by his Branch Clerk of Court to the Department of

Justice for the same period, wherein it was made to appear that respondent had no case pending decision for more than ninety days; that respondent had incurred un-reasonable delay in taking appropriate action on many pending cases; that such inefficiency resulted in the heavy accumulation of old cases in his docket, which reveals the following:

"a. In Case No. R-6818 for Forcible Entry, pending since July 31, 1962 when the respondent assumed office, action was taken only on October 31, 1967, after a lapse of 5 years and 3 months;

"b. Action was unreasonably delayed in the following pending cases:

"I. CRIMINAL CASES

CASE NO.

NATURE

DATE OF LAST ACTION

TIME ELAPSED

AS OF MAY 31, 1971

V-12575

Murder

11-28-69

1 yr. 6 mos 3 days

CU-261

Oral Defamation (Appealed)

12- 3-70

5 mos 28 days

CU-267

Robbery

12-14-70

5 mos 17 days

V-13286

Grave Coercion

12-15-70

5 mos 16 days

CU-122

Counterfeit Money

1-27-71

4 mos 4 days

V-12262

Estafa

1-29-71

4 mos 2 days

“II. CIVIL CASES

R-11377

Damages

9- 5-69

1 yr. 8 mos 26 days

R-8968

Partition

1-17-70

1 yr. 4 mos 14 days

R-11499

Quieting Title

1-20-70

1 yr. 4 mos 11 days

R-11593

Proh & Prelim Injunction

2-19-70

1 yr. 3 mos 12 days

R-11620

Certiorari

4-22-70

1 yr. 1 mo 9 days

R-8641

Injunction

7-31-70

10 mos

R-11998

Ejectment

12-16-70

5 mos 15 days

“c. The following pending cases were acted upon only after unreasonable delay:

CASE NO.

NATURE

DATE OF LAST ACTION

DATE RE-ACTIVATED

TIME ELAPSED

R-9151

Damages

1-26-66

11-29-70

4 yrs 8 mos 25 days

R-9236

Damages

4-14-66

9-16-69

3 yrs 5 mos 2 days

R-9602

Recovery of Prop

10-8-66

1-24-70

3 yrs 3 mos 16 days

R-9988

Partition

6-19-67

8-27-70

3 yrs 2 mos 8 days

R-10220

Partition

2-12-69

12-24-70

2 yrs 4 mos 29 days

R-9563

Sum of Money

2-15-69

12-24-70

1 yr 10 mos 12 days

R-9046

Sum of Money

2-15-66

4-29-67

1 yr 2 mos 14 days

11-24-67

10-2-69

1 yr 10 mos 8 days

1-2-70

4-17-71

1 yr 3 mos 15 days

56-V

Probate

10-19-62

8-24-67

1 yr 10 mos 5 days

R-10699

Specific Performance

10-5-68

5-25-69

7 mos 20 days

3-13-70

4-23-71

1 yr 1 mo 10 days

R-8611

Sum of Money

12-14-66

5-2-68

1 yr 4 mos 18 days

3-13-69

7-29-70

1 yr 4 mos 16 days

"In a Resolution dated August 30, 1971, the Supreme Court required Respondent to file his answer to the complaint within ten (10) days from notice.

"Before Respondent could file his comment, the Secretary of Justice filed on September 14, 1971, a 'Motion To Hold Proceedings In Abeyance' stating inter alia, that, on the basis of the decisions prepared by the respondent in Criminal Cases Nos. V-12498, V-13042 and CU-236, Complainant found that Respondent acted in good faith in the filing of his certificates of service; and that although the Respondent's explanation with respect to four (4) other cases pending decision needed corroboration from the records, the suspension of the payment of Respondent's salary had been lifted on the ground that he had acted in good faith.

"In his explanation submitted to Complainant, Respondent averred that the decisions in Criminal Cases Nos. V-12498, V-13042, and CU-236 (cases appealed from the lower court), were already prepared and ready for promulgation but, because of a material question pending with the Supreme Court regarding the interpretation of Republic Act No. 6031, he issued orders (Annexes "A"; "B" and "C") holding in abeyance the promulgation of the decisions until the Supreme Court shall have decided the petition for Certiorari and Mandamus in Civil Case No. 8592 entitled Julianio Enad vs. Augustin Mantalaba et al., also originating from his Court; that Criminal Case No. CU-184, another appealed case from the City Court of Lapu-Lapu, was transferred to the new Branch of the Court of First Instance of Lapu-lapu City; that in regard to Civil Cases Nos. R-9202, R-11871 and 11874, two of them were transferred to the new Branch of the CFI of Cebu City and the third was decided by him within the 90 day period; that the decisions in these cases were also held in abeyance pending the decision of the Supreme Court in the aforesaid case of Enad vs. Montalaba case because they were similarly situated as the criminal cases aforementioned; that in the 24 cases referred to, action was delayed because they were not calendared by the Clerk of Court, and the parties took no steps to have the cases heard; and that despite the Court's lack of personnel, consisting of only a total of 10 employees, his court had the least number of pending cases among the six (6) branches in Cebu City. "On the basis of the memorandum of

Judicial Supervisor Umberto Ancajas, dated November 26, 1971, Judge Jose Borromeo decided Criminal Cases No. V-12498, V-13042 and CU-236 within 90 days after they were considered submitted for decision.

"The 24 cases wherein action was allegedly delayed, were disposed of by Respondent in a manner consistent with the normal disposition of cases as shown by the data prepared by the Branch Clerk of Court, as follows:

CASE NO.

N A T U R E

S T A T U S

R-6818

Forcible entry

Transferred to Br. XV

V-12575

Murder

Dismissed 9-18-71

CU-261

Oral Defamation (Appealed)

Decided 11-15-71

CU-267

Robbery

Archived 9-28-71

V-13286

Grave Coercion

Ordered forwarded

to Court of Appeals

4-06-72

CU-122

Counterfeit Money

Transferred to Br. XIV

V-12262

Estafa

Cont trial set on

616-72

R-11377

Damages

Dismissed 9-03-71

R-8968

Partition

Dismissed 8-23-71

R-11499

Quieting Title

Transferred to Br. XIV

R-11593

Proh & Prelim

Injunction

Dismissed 8-26-71

R-11620

Certiorari

Transferred to Br. XIV

R-8641

Injunction

Dismissed 6-25-71

R-11998

Ejectment

Transferred to Br. XVI

R-9151

Damages

Transferred to Br. XIV

R-9236

Damages

Decided 4-14-72

R-9602

Recovery of Property

Cont of hearing on

6-30-72

R-9988

Partition

Transferred to Br. XIV

R-10220

Partition

Cont of hearing on

6-19-72 and on

7-05-72

R-9563

Sum of Money

Decided 4-12-72

R-9046

Sum of Money

Decided 11-24-71

56-V

Probate

Transferred to Br. XIV

R-10699

Specific Performance

Pending memorandum

R-8611

Sum of Money

This case is not assigned to Branch IV CFI-Cebu

"Data appearing under 'STATUS'

column prepared by:

(SGD) CONRADO ABELARDO

Branch Clerk of Court

CFI, Cebu, Br. IV

"Slight delay in the disposition of some of the cases, may be attributed to the nature of the cases, such as Guardianship proceedings, wherein no closure of the proceedings may be ordered until the incompetent ward becomes competent or dies, or Intestate Estate proceedings which may not be dismissed even for lack of interest of the parties.

"Considering the manifestation set forth in the 'Motion To Hold Proceedings In Abeyance', whereby the Secretary of Justice exculpated Respondent, and the explanation of Respondent regarding the cases in question, it is respectfully submitted that the complaint against Judge Jose Borromeo may be dismissed."

In attention to the above recommendation, the Court has reviewed all pertinent records and has arrived at the conclusion that while respondent's performance as a judge may not be considered excellent nor exemplary, the same may not be said to be unsatisfactory or below average. In fact, it is to be noted that he succeeded in substantially relieving the docket of the sala to which he was assigned and in a manner which can compare favorably with the other judges similarly situated.

It may not be amiss to state here that on September 14, 1971, the complainant, as mentioned in the above memorandum, filed the following:

"MOTION TO HOLD PROCEEDINGS IN ABEYANCE

"The complainant Secretary of Justice respectfully manifests:

"1. That, in connection with the filing of the instant case, the complainant, on August 10, 1971, wrote to the respondent a letter, a copy of which is herewith attached as Annex 'A', calling attention to the large number of pending cases in his court, including cases pending decision for more than ninety days, and suspending payment of the respondent's salary.

"2. That, on August 23, 1971, the respondent replied to the complainant in a letter, a copy of which is herewith attached as Annex 'B', submitting his explanation on the cases pending decision and commenting briefly on the other pending case. The respondent also submitted, by way of corroborating his explanation, the records of three of the criminal cases pending decision, namely, No. V-12498, V-13042 and CU-236.

"3. That, on the basis of the respondent's explanation and the records of the three criminal cases submitted by him, the complainant found that these cases had already been decided, as shown by the corresponding decisions submitted by the respondent; that the respondent suspended the promulgation of these decisions because the cases had been appealed from the city courts; and that, in view of a certiorari proceeding in the Supreme Court involving the finality of the decision of the Court of First Instance on appeal, the respondent suspended the promulgation of the decisions to give the accused if convicted a chance to appeal if the Supreme Court should hold that he has that right.

"4. That, on the basis of the decisions prepared by the respondent in the said three criminal cases, the complainant found that the respondent acted in good faith in filing his certificates of service, even if the correctness of his act in suspending the promulgation of the said decisions may be disputed.

"5. That, with respect to the other four cases pending decision, the respondent explains that they consist of one criminal and three civil cases appealed from municipal or city courts, which he did not consider submitted for decision because the records of these cases did not include the transcript of the proceedings in the lower courts.

"6. That, although the respondent's explanation with respect to the other four cases pending decision needs to be corroborated by the records of these cases, the complainant, considering the respondent's explanation with respect to the three criminal cases which he decided, found the said explanations sufficient to warrant the lifting of the suspension of the payment of the respondents salary on the ground that he had acted in good faith in filing his certificates of service.

"7. That, since the respondent does not fully explain the large number of pending cases in his court, it is believed that, in view of his explanation with respect to the cases pending decision, he should be given a fair opportunity to explain to the complainant his side on the charges filed against him in the instant case in order that the complainant may consider whether such explanation is satisfactory as a basis for filing a petition to either amend or withdraw the charges.

"8. That, in order to give the respondent sufficient time to prepare and submit his explanation to the complainant and to give the complainant sufficient time to consider such explanation, it is believed that the proceedings in the instant case should be held in abeyance.

"WHEREFORE, it is respectfully prayed that the proceedings in the instant case be held in abeyance to give the respondent a fair opportunity to explain to the complainant his side on the charges and to give the complainant sufficient time to consider whether such explanation is satisfactory as a basis for filing a petition to either amend or withdraw the charges."

While it is true that on October 10, 1972, complainant subsequently filed a motion to resume proceedings stating that "complainant, after carefully considering the explanation of the respondent judge, has, much to his regret, found it unsatisfactory," it is Our considered opinion, on the basis of Our more detailed study of the documents submitted to Us that punitive action more than an admonition to respondent to augment his efforts to act with dispatch in the performance of his functions would be unwarranted. And inasmuch as respondent has already reached the age of compulsory retirement, such admonition would now be academic.

WHEREFORE, the Memorandum of the Judicial Consultant aforequoted is hereby approved, the complaint against respondent is dismissed and the payment of his retirement benefits is allowed.

Fernando, Antonio, Aquino, Concepcion, Jr. and Martin, JJ., concur.

Castro, C.J., and Makasiar, J., concurs in the result.

Teehankee, J., concurs in the result in a separate opinion.

Muñoz Palma, J., concurs in the concurring opinion of Justice Teehankee.

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SEPARATE OPINION

TEEHANKEE, J.:

I concur in the result, considering the finding that respondent judge during his tenure had "succeeded in substantially relieving the docket of the Sala to which he was assigned." It should be made clear at the same time that a trial judge bears the principal responsibility for a false or untrue certification that he has no case or motion pending decision for more than ninety days and that judges in the past have been separated from the service for the submission of such false certifications.

Where a trial judge is appointed to a court wherein his predecessor has left several old cases without decision, this Court has adopted the policy of granting him upon application a reasonable period of time over and above 90 days within which to decide the same, specially considering that he was not the one who tried the case and would have to rely on the record and transcripts of stenographic notes. It is the judge's duty to take regular stock of his docket of cases pending decision and when special reasons so justify, to apply to this Court for extension of the reglementary 90-day period to render his decision.

The mere fact that a judge has reached the compulsory age of retirement does not render moot an administrative case pending against him as in this case. Such pending administrative case subsists and where the judge is found administratively guilty may result in the forfeiture of all or part of retirement benefits that would otherwise be due him. (See *Perez vs. Abiera*, 64 SCRA 302, 309 [June 11, 1975] and *Sec. of Justice vs. Marcos*, AM 207-J [April 25, 1977])

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