

MERCEDES DE LA MAZA, PETITIONER, VS. MARCELO OCHAVE, IN HIS CAPACITY AS MAYOR OF ALAMINOS, PANGASINAN, RESPONDENT.

G.R. No. L-22336. May 23, 1967

Ponente: REGALA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a0b6dfba2980/>

REGALA, J.:

This is a petition to review a decision of the Court of Appeals.

The facts of the case, narrated in the appealed decision, are as follows:

In July, 1959, the petitioner, Mercedes de la Maza, was extended a probationary appointment as clerk in the Municipal Treasurer's office of Alaminos Pangasinan, with salary at P1,080 per annum. Upon receipt of her appointment, she immediately reported for work and said appointment was made permanent by the Commissioner of Civil Service, effective on July 1, 1959.

On January 5, 1960, an incident of name-calling, or an altercation, took place between petitioner and her co-employees during office hours, in the municipal building of Alaminos, and within the public view, the details of which are debated. While petitioner's co-employees said she was at fault, she claimed innocence upon being required to give her version.

In a letter of resignation with a date made to appear as January 29, 1960, the petitioner addressed the municipal mayor of Alaminos, to wit:

"I have the honor to tender my resignation as Clerk, Office of the Municipal Treasurer, this municipality, effective January 29, 1960, at the close of office hours.

"I wish to state at this juncture, my heartfelt gratitude to your administration; to all municipal officials, and to my co-workers for the very kind cooperation we have had during my stay in your office.

"Reiterating my grateful thanks, I am

"Very truly yours,

"(Sgd.) (Mrs.) MERCEDES DE LA MAZA

"APPROVED:

"(Sgd.) MARCELO OCHAVE

Mayor

The date "January 29, 1960" appears, however, to have been merely superimposed over another typewritten date that had been erased.[1]

Subsequently, or on March 7, 1960, the Municipal Council abolished petitioner's position, in the view that her

resignation resulted in a vacancy. As a result of this abolition, petitioner, on April 7, 1960, filed an administrative case against Mayor Marcelo Ochave, on the grounds of maladministration, oppression and political persecution. This was investigated but there is no showing that it has been terminated.

On May 27, 1961, the petitioner filed with the Court of First Instance of Pangasinan a petition to compel payment of her salaries, alleging that she had not been able to collect her salary from February 1 to 15, and from March 5, 1960 and thereafter. (She was on leave without pay in the interval from February 16 to March 3, 1960.)

In answer to the petition, respondent mayor alleged that petitioner had other administrative remedies to pursue, as, in fact, one was still pending; that petitioner had resigned on January 29, 1960; that her position had been abolished; and that since more than one year had elapsed from the time she was excluded from office she had virtually abandoned it.

The court a quo dismissed the petition holding that since petitioner had allowed more than one year to pass before filing her action, it can no longer be entertained under the authority of the *Unabia v. Mayor* case, 99Phil., 253.

Petitioner then appealed to the Court of Appeals which court upheld the trial court's ruling. Whereupon, the petitioner elevated the case to Us for review.

At the outset, it is to be made clear that while Petitioner's action appears to be an action to compel payment of salaries, the determinative question is the legality or illegality of her removal from her position in the office of the Municipal Treasurer of Alaminos.

It has been repeatedly held that any person claim-ing right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise, he is thereby considered as having abandoned his office.[2] This is in line with the rule fixing the period of one year within which actions for quo warranto may be instituted.[3] The petitioner here filed her petition as late as May 27, 1961, more than a year after the abolition of her position on March 7, 1960, which date is, at the latest, the effectivity date of her removal.

There is no doubt that the Municipal Council has the power to abolish the position in dispute, for the principle is settled that the power to create an office includes the power to abolish it, unless there are constitutional or statutory rules expressly or impliedly providing otherwise.[4] A recognized exception to the valid exercise of such power is when the abolition of an office is done in bad faith, as when the purpose is to discharge the incumbent in violation of the civil service.[5]

It is difficult to see how bad faith could have been the basis of, or an element in, the abolition of the position in question. Firstly, it was effected after the petitioner had filed her letter of resignation. Secondly, there is no showing that another position was created and that another individual has been appointed to occupy that position. Besides, it appears that the questioned abolition came about upon an indorsement from the Treasurer's office of a letter coming from the Chief Supervising Treasurer, Local Government Finance Division of the Department of Finance, advising the Municipal Council of Alaminos, Pangasinan of an overdraft or excess in the amount of P854.30 over the maximum amount expendible for salaries and wages incurred by that municipality in its annual budget for the current year.

Petitioner contends that the abolition of her posi-tion never took effect since it was not approved by the Secretary of Finance. Whether or not the abolition be-came effective is beside the point, since it seems clear from the facts that as early as February 1, 1960, petitioner had no longer been recognized as an employee of the municipal government, because she had not been paid her salary since then, not by reason of abolition of her position but perhaps by virtue of her resignation dated January 29, 1960. In *Procopio R. Morales, Jr. v. Patriarca*, G. R. No. L-21280, October 21, 1965, this Court, resolving the motion for reconsideration in that case, made the following

pronouncement:

"x x x A clear indication that petitioner was deemed removed from said date is the re-fusal of the Secretary of Justice thereafter to authorize payment of salaries and emoluments to him in any way as such Justice of the Peace. Consequently, whether petitioner was legally or illegally removed, the fact is that he was removed just the same. Petitioner may have continued discharging the functions of his of-fice, but the same does not detract from the fact that he had been dismissed and that said dismissal had been implemented by non-recognition of his official capacity, and non-payment of salaries." (Emphasis ours)

Whether we consider her removal as having been effected as of her resignation or as of the date she was no longer paid her salaries or as of the abolition of her position, the conclusion is inevitable that petitioner's action was not filed within one year from said removal.

IN VIEW HEREOF, the decision under review is hereby affirmed, without special pronouncement as to costs.

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

[1] Respondent explains this in his brief, thus – "[Petitioner] went to see the respondent for a conference on January 29, 1960. During said conference petitioner, then, pleaded with the respondent not to file any administrative case against her and she will resign, in order to protect her civil service eligibility and so as not to blemish her civil service record. Instead of writing a new letter of resignation, she (petitioner) requested for her previous letter of resignation dated September 30, 1959, and for her to change the date by erasing the former and superimpose January 29, 1960. The respondent asked for the record file of the petitioner and handed the same to her."

[2] Unabia v. City Mayor of Cebu, Supra; Alipio et al v. Rodriguez, et al., L-17366, Dec. 26, 1963; Morales v. Patriarca Toriano, L-21280, Oct. 21, 1965; Villaluz v. Zaldivar, et al., L-22754, Dec. 31, 1965.

[3] Section 16, Rule 66, Rules of Court.

[4] Castillo v. Pajo, et al., L-11262, April 28, 1958; Brillo v. Enaje, 50 O.G. 3102; Facundo v. Pabalan, L-17746 & L-17808 (Ulep v. Leonardo Carbonell, et al.), Jan. 31, 1962.

[5] Alipio et al v. Rodriguez, et al., supra.

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.