

SECRETARY OF EDUCATION, PERSONNEL OFFICER, DIRECTOR OF PUBLIC SCHOOLS, THE CASHIER, FINANCE SCHOOL DIVISION, AND LILIA T. AREVALO, PETITIONERS, VS. HON. MAGNO S. GATMAITAN, ARSE...

G.R. No. L-34052. March 13, 1972

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the resolution of the Court of Appeals dated July 29, 1971 (in its case GR-41078-R),[1] hereunder quoted in full:

"CONSIDERING: That this case was deemed submitted for decision on 19 April, 1971, p. 71 rollo; it was raffled on 20 July, 1971; but after a study of the records, this Court has noticed that while originally it was a complaint in injunction to prevent the appointment by the then Secretary of Education of one Lilia T. Arevalo, par. 2, original complaint, filed on 3 May, 1965, and the first trial Judge issued preliminary injunction to prevent that but too late on 15 May, 1963, page 19, Record on Appeal, because the then Secretary of Education appointed Lilia T. Arevalo just the same on 10 May, 1965. Exh. 28; so that plaintiff later on in an amended complaint, made Lilia T. Arevalo an additional defendant, page 99, Record on Appeal; but it also turns out that the filling of the position was approved by the Executive Office (Secretary) but worse for plaintiff, the very appointment of Lilia T. Arevalo was approved by the Commissioner of Civil Service, Exh. 28-a; and this nevertheless, these two were not included as new defendants;

"CONSIDERING: That with the approval by the Executive Office (Secretary) and the Commissioner of Civil Service, of said appointment by the then Secretary of Education of Lilia T. Arevalo to the disputed position, said two officials became indispensable parties because without them, no final determination can be made on the rights of plaintiff should he insist in ventilating them in Court;

"CONSIDERING: That while this case is now here on appeal, it does not become very fair to dismiss plaintiff's case just on this ground, because after all, non-joinder does not annul a cause of action assuming there was one - which let it be said this Court cannot as of now, say there was, in this case — is not a ground for dismissal, and the courts may order at any stage of the action, Moran, Rules of Court, 1:198, 1970 edition, the inclusion of necessary parties, Rule 3, Sec. 11, Martin, Rules of Court, 1:190, 2nd edition both citing juris-prudence;

"IN VIEW WHEREOF, setting aside the judgment for the present, this Court orders that the records be remanded to the trial Court so that plaintiff-appellant may be given the chance should he decide to insist in his case, to include as additional parties, the Executive Secretary and the Commissioner of Civil Service, this by him to be done within a period to be fixed by trial Judge; should he not do so within that period, This case shall be dismissed."

The two grounds for this appeal, as set forth in the petition filed by the Solicitor General, are: (1) the Court of Appeals erred in holding that the Executive Secretary and the Commissioner of Civil Service are indispensable

parties; and (2) it was error for the Court of Appeals to set aside the judgment of the trial court and order the remand of the record to the court a quo only for the purpose of including the said two officials as parties and to hear them before rendering a new judgment.

Required to comment on the petition, the respondent Ferrer filed a motion to dismiss, justifying the resolution of the Court of Appeals. We asked the Solicitor General, as counsel for petitioners, to comment on this motion to dismiss. On December 6, 1971 the Solicitor General submitted the following "Comment":

"Contrary to the assertion of said respondent, the Executive Secretary and the Commissioner of Civil Service are not indispensable parties, because this case involves a contest as to who is entitled to the position of Auditor II of the Bureau of Public Schools such that if respondent Ferrer were to finally prevail, which is remote, the decision will bind the said officials whether parties or not;

"Even if the Executive Secretary and the Commissioner of Civil Service were included as parties respondents, they need not file separate answers nor present evidence to support their contention, because as officials of the sovereign state, they would likewise be represented by the Solicitor General in this case, but the Solicitor General has raised all defenses in behalf of government officials presently impleaded as parties, thus making it unnecessary to file a separate answer or introduce further evidence in behalf of the proposed parties;

"Affidavits duly executed by the Executive Secretary and the Commissioner of Civil Service are hereto attached as Annexes A and A-1, respectively, in support of this submission.

"WHEREFORE, it is respectfully prayed that the motion to dismiss filed by private respondent Alberto S. Ferrer be denied, and this case be forthwith remanded to the Court of Appeals with directive to the said appellate Court to decide the case on its merits."

On December 20, 1971, we issued the following resolution:

"In G.R. No. L-34052, The Secretary of Education, et al. vs. Hon. Magno S. Gatmaitan, et al., it appearing from the petition and the decision of the Court of Appeals that the only issue for determination is whether or not in the premises, the Executive Secretary and the Commissioner of Civil Service are indispensable parties to the basic case, the Court of Appeals having held them to be so, the Court, in the interest of expedient administration of justice, resolved to (1) GIVE DUE COURSE to the petition; (2) consider the petition as already the brief of the petitioners; (3) require the respondents to answer the said petition within an unextendible period of twenty (20) days from notice hereof, the said answer to be considered when filed as already the brief of respondents; and (4) to consider this case submitted for decision upon the filing of said answer, unless the Court orders otherwise."

In compliance with this resolution, the respondent Ferrer, on December 27, 1971, manifested thus:

"That in view of the affidavits duly executed by the Honorable Executive Secretary and the Commissioner of Civil Service (Annex 'A' and 'B' of the Comment of the Assistant Solicitor General) 'adopting' the answer already filed by the Secretary of Education and the evidence adduced, and would forego to submit further evidence, the herein respondent hereby respectfully submits the case for the resolution of this Honorable Supreme Court without any further answer so as to expedite the resolution of this case."

We find merit in the contention of the Solicitor General that the Executive Secretary and the Commissioner of Civil Service are not indispensable parties in the present action of the respondent Ferrer. The respondent Court of Appeals has overlooked the pivotal fact that while this action was originally one for injunction against the Secretary of Education, the amendment of the complaint – which had to be made when it turned out that the impugned appointment had already been extended to the petitioner Lilia T. Arevalo, five days before the writ of preliminary injunction was issued by the trial court resulted in the conversion of Ferrer's remedy into one of quo warranto. Indeed, the original remedy of injunction could not be maintained even as against the Executive

Secretary and the Commissioner of Civil Service, since they had approved the appointment before they were made parties:

It is obvious that in the quo warranto proceeding into which Ferrer's remedy thus developed, the only indispensable party is the petitioner Arevalo. All the officials mentioned in the amended complaint who in one way or another acted on the questioned appointment ceased to be even nominal parties. This adversary proceeding is exclusively between the claimant to the disputed office and the supposed intruder (unless it is the Solicitor General who files the petition on behalf of the State). Under section 10 of Rule 66, the judgment appropriate in a case of this nature is defined as follows:

"Judgment where usurpation found. – When the defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, position, right, privilege, or franchise, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the plaintiff or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the office, position, right, privilege, or franchise of all the parties to the action as justice requires."

It is thus clear that none of the aforementioned officials would be called upon to act or do anything, assuming Ferrer's petition should succeed. The test of indispensability of a party in an action or proceeding is precisely whether or not, absent the party or parties desired to be impleaded, a final determination can be had of the case. (Sec. 7, Rule 3 of Rules of Court)

Withal, assuming that the Executive Secretary and the Commissioner of Civil Service are indispensable parties, in view of the uncontradicted manifestation of the Solicitor General that the said officials have no evidence of their own to present nor any new issue to raise in relation to the petition, the Court of Appeals should have merely ordered their joinder in the appeal as appellees and proceeded to determine the case on the merits, it being evident that the remand of the case to the lower court would serve no useful purpose. The respondent Ferrer has not shown, and we do not believe he can show, that such a procedure would cause him any prejudice.

ACCORDINGLY , the resolution of the Court of Appeals appealed from is hereby set aside, and this case is ordered returned to the Court of Appeals for further proceedings consistent with the above opinion. No costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur.

Fernando, J., concurs in the result.

Barredo, J., took no part.

[1] "Alberto S. Ferrer, plaintiff-appellant vs. Secretary of Education, Personnel Officer, Director of Public Schools, The Cashier, Finance School Division and Lilia T. Arevalo defendant-appellees."

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