

ROMAN LICUP, PLAINTIFF AND APPELLANT, VS. MANILA RAILROAD COMPANY AND GOVERNMENT SERVICE INSURANCE SYSTEM, DEFENDANTS AND APPELLEES.

G.R. No. L-16196. May 30, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of Manila dismissing Roman Licup's complaint against the Manila Railroad Company and the Government Service Insurance System (C.C. No. 41210) on the ground of res judicata.

It appears that on October 20, 1956, appellant Licup filed in the Court of First Instance of Manila Civil Case No. 31161 seeking a writ of mandamus against the Government Service Insurance System and the Manila Railroad Company alleging inter alia, that he had been a government employee from August 17, 1909 up to June 1, 1951, his last position having been that of Chief of Police of the Executive Department of the Manila Railroad Company; that in the year 1950, in view of the precarious financial condition of government-owned and controlled corporations, Congress passed Republic Act No. 422, otherwise known as the "Reorganization Act of 1950", authorizing the President of the Philippines to reorganize within one year the different executive departments, bureaus, offices, agencies, and other instrumentalities of the government, including the corporations owned and controlled by it; that to give effect to the provisions of said Reorganization Act, the Board of Directors of the Manila Railroad Company approved the recommendations of the Labor-Management Committee formed purposely to study and recommend plans for the revamping of the whole structure of the company's organization, and pursuant to such recommendations, petitioner was separated from service on June 1, 1951; that subsequently to petitioner's separation, Republic Act No. 660, known as the "Retirement Law", was passed, providing, among other things, for the retirement under its provisions of "any officer or employee whose position was abolished or who was separated from the service as a consequence of the reorganization provided for in Republic Act Number Four Hundred & Forty-Two"; that petitioner repeatedly notified the GSIS of his desire to be retired under Republic Act No. 660, as amended by Republic Act No. 728, but such demands and other representations made by petitioner with the GSIS and the Manila Railroad Company notwithstanding, both entities had refused to allow him to exercise his rights under said law. Whereupon, petitioner prayed that the GSIS be ordered to retire him under the provisions of Republic Act No. 660, and that both the GSIS and the Manila Railroad Company be required to pay him damages, attorney's fees, and costs.

The GSIS filed a motion to dismiss the petition and the Manila Railroad Company, an answer; both alleged that petitioner Licup had no cause of action to maintain his petition for mandamus. On January 7, 1957, the trial court dismissed the case under the following order:

"ORDER

This is an action for Mandamus against the Government Insurance System and the Manila Railroad Company

filed by the herein plaintiff Roman Licup.

The respondents in this case filed a motion to dismiss dated December 12, 1956 on the ground that there is no cause of action.

Petitioner alleges that he was separated from the service of the Manila Railroad Company under Republic Act 422 otherwise known as Reorganization Act. Such being the case, he is entitled to be retired under the provisions of Section 26 of Republic Act 660. However, Annex "B" of the petition which states that the petitioner's last employer was the Manila Railroad Company shows that the separation of the petitioner from the Manila Railroad was not due to the reorganization provided for in Republic Act 422. Consequently, petitioner is not entitled to the retirement asked for under Republic Act 662 in connection with Republic Act 422. The case is hereby dismissed for lack of merits without cause.

SO ORDERED."

Petitioner Licup did not appeal from the above order of dismissal.

More than two years later, on August 14, 1959, Licup filed another complaint with the Court of First Instance of Manila (Civil Case No. 41210), also against the Manila Railroad Company and the Government Service Insurance System, alleging substantially the same facts as those alleged in his first petition for mandamus against the same defendants (Civil Case No. 31161), and asking for the same relief, except that he demanded more damages and attorney's fees in his second complaint. Both defendants moved to dismiss the complaint for the reason that it is barred by the prior judgment in Civil Case No. 31161, and the complaint was dismissed by the Court on that ground. From the order of dismissal, Licup appealed to this Court, urging that the order of dismissal in Civil Case No. 31161 can not be res judicata in this case because it was not a judgment on the merits and that, furthermore, there is no identity of cause of action in the two cases.

We find the appeal untenable.

There is definitely an identity of parties and causes of action in appellant's first petition for mandamus and his present complaint; both cases were filed by him against the GSIS and the Manila Railroad Company, and both raise exactly the same issue or cause, namely, appellant's supposed right to retire under the provisions of Republic Act No. 660, as amended, having been separated from service under the provisions of the Reorganization Act of 1950. Even the relief asked for in the two cases is the same: to allow appellant to retire under Republic Act No. 660, as amended, and to allow him to recover from defendants damages, attorney's fees, and costs.

Appellant urges, however, that the order of dismissal in Civil Case No. 31161 having been rendered on motions to dismiss presented by defendants on the ground that the complaint did not state a cause of action, the merits of the case was never presented to the trial court for decision and, consequently, said order of dismissal was not an adjudication or judgment on the merits within the rule of res judicata.

There is, likewise, no merit in the above argument.

The Rules of Court provides that "unless otherwise ordered by the court, any dismissal not provided for in this rule (Rule 30), other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits" (Rule 30, sec. 4). Under this rule, the order of dismissal in Civil Case No. 31161, not being one for lack of jurisdiction nor comprised under Rule 30, is an adjudication on the merits and, therefore, precludes another action based on the same cause.

It is true, as pointed out by appellant, that the above rule does not exclude other instances where a dismissal not based on lack of jurisdiction does not operate as an adjudication on the merits, like a dismissal based on wrong venue. These exceptions are, however, grounded on the fact that the case is dismissed or goes off on a

preliminary, technical plea or objection, not bearing on the merits of the case. For instance, a dismissal on the ground of improper venue, though not strictly a jurisdictional matter, may be considered as lack of jurisdiction over the person of the defendant and hence does not operate as an adjudication on the merits (*Cohen vs. Benguet Comm. Co.* 34 Phil., 526; *I Moran*, *Comments on the Rules of Court*, 1957 Ed., p. 433). Similarly, a dismissal based on want of capacity to sue is not a bar to another action after the incapacity is removed (50 C.J.S. 53); a dismissal because the action was prematurely brought will not bar another action for the same cause. When the right of action becomes complete (*id.*, p. 54); or a judgment of dismissal on the ground of formal defects or errors in the complaint which do not touch on the merits of the controversy is no bar to a second suit wherein the defects in the previous pleading are cured or obviated (*id.*, p. 67; *Araneta vs. Diaz, et al.*, 69 Phil., 390).

But the order of dismissal in Civil Case No. 31161 does not fall under any one of the cases that may be considered exceptions under Section 4, Rule 30. Although said order recites that the respondents had filed a motion to dismiss "on the ground that there is no cause of action", the reason given for the dismissal is not that the complaint was formally defective or that it does not sufficiently state a cause of action, but that while "petitioner alleges that he was separated from the service of the Manila Railroad Company under Republic Act 422, otherwise known as the Reorganization Act", so that "he is entitled to be retired under the provisions of Section 26 of Republic Act 660", Annex "B" of the petition, "which states that the petitioner's last employer was the Manila Railroad Company", however, "shows that the separation of petitioner from the Manila Railroad was not due to the reorganization provided for in Republic Act 422"; "consequently, petitioner is not entitled to the retirement asked for under Republic Act 660 in connection with Republic Act 422"; and the case was, accordingly, ordered "dismissed for lack of merits".

The above order rules, in a conclusive and definitive manner, on petitioner's supposed right to retire under Republic Act No. 660, as amended (the same right averred in and subject of his present complaint), finding that he has no such right because he was not separated from service due to the reorganization provided for in Republic Act No. 422, and dismissing his action "for lack of merits". This order puts an end to the controversy between the parties as to the right of retirement invoked by petitioner. It is, therefore, an adjudication on the merits that became final and conclusive because of petitioner's failure to appeal therefrom. In another case where a similar order of dismissal was involved, we held:

"Despite appellant's claim that the principle of *res adjudicata* is not applicable for the reason that Civil Case No. 1970 was not decided on the merits but was merely dismissed, we agree with the trial court that said case bars the present action. Although Civil Case No. 1970 was dismissed, nevertheless, the rights of the parties therein were adjudicated. Evidently, on the manifestations and admissions of both parties, if not on the evidence adduced, the trial court there held that Guzman could not be permanently transferred or appointed to another town as Assistant Sanitary Inspector, but that his assignment to Pantabangan was only temporary, to act during the leave of absence of the incumbent in that town, which temporary assignment was within the powers of the District Health Officer of Nueva Ecija, and the court even fixed the period of assignment not to exceed 30 days. Evidently, the trial court found that Ramoso acted within the scope of his powers as acting District Health Officer, and in good faith without any ulterior motive; that Guzman was not entitled to the damages claimed by him, including his prayer to receive his back salary from April 1 to December 7, 1955. As already stated, Guzman failed to appeal from that order of dismissal which naturally became final." (*De Guzman vs. Ramoso*, 102 Phil., 883).

The order appealed from is affirmed. No costs, appellant Licup being a pauper litigant.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon and Natividad, JJ., concur.

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