

**CANDELARIO ALMENDRAS, TIMOTEO T. OMAI, ET AL.,
PETITIONERS AND APPELLEES, VS. AMADO DEL ROSARIO, ET AL.,
RESPONDENTS, AMADO DEL ROSARIO AS COM-MISSIONER OF CIVIL
SERVICE, RESPON...**

G.R. No. L-20158. July 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the Commissioner of Civil Service from the decision of the Court of First Instance of Cebu in Civil Case No. R-7211 holding that the City Mayor of Cebu is the one vested with power to appoint the officers and employees of the Osmeña Waterworks System; ordering the Commissioner of Civil Service to attest and approve the appointments of 175 employees of said System, herein appellees, if they are eligible under the Civil Service Law, and ordering the City Treasurer and City Auditor of Cebu to authorize payment to them of their salaries specified in their respective appointments, but dismissing their claim for damages.

Appellees Candelaria Almendras, Timoteo T. Omai and 173 others were, on July 1, 1961 and subsequent dates, appointed as officials and employees of the Osmeña Water-works System by the City Mayor of Cebu (Exhs. "A", "A-1" to "A-174"). Some of the appointments, promotional in nature, were made by the Secretary of Public Works and Communications, while the others - original appointments - were signed by the City Mayor of Cebu like previous appointments made in 1957. The appointments issued by the Secretary were duly approved but those signed by the City Mayor of Cebu were refused approval by the Commissioner of Civil Service who held the view that the proper appointing power is the Secretary of Public Works and Communications. Thereupon, appellees, who were adversely affected by said ruling, commenced the present action for mandamus against the Commissioner of Civil Service to compel him to attest and approve their appointments (issued by the City Mayor of Cebu), and against the City Auditor and City Treasurer of Cebu for them to authorize the payment of their salaries appertaining to their positions as of the date of their appointments.

Through their counsel, the parties on March 14, 1962 submitted to the trial court the following stipulation of facts:

"Both the petitioners and the respondents in the above-entitled case respectfully appear, through counsels, and Submit to this Honorable Court the following stipulation of facts:

1. That the authenticity of the appointments issued by the City Mayor to petitioners, attached to the records of this case as Annexes A, A-1, A-2, etc., up to A-174 is admitted by the parties; that some of these appointments are promotional and the rest are original; that the previous appointments of those given promotional appointments in this case were extended by the Secretary of Public Works and Communications; and that all those appointees of the Secretary of Public Works and Communications were in 1957 or there about also extended appointments by the City Mayor of Cebu, which appointments so far have been refused attestation or approval by the Commissioner of Civil Service who returned the same to the City Mayor;

2. That the parties also admit the authenticity of Annexes A, A-1, A-2, A-3, A-4 and A-5 of this stipulation; but respondents aver that Annexes A-2 and A-3 are immaterial, irrelevant and impertinent on the ground that they do not prove any allegation in the petition and, besides, Annex A-2 is post litem motam, the same having been issued on December 16, 1961, while this case was filed on September 21, 1961, while this case was filed on September 21, 1961, self-serving and contains erroneous conclusions of law;

3. That the parties admit that there is a pending case in the Supreme Court entitled Ramon Duterte, et al., Petitioners-Appellants, vs. Florencio Moreno, et al., Respondents-Appellees, G. R. No. L-15142 on appeal from the decision handed down by the Court of First Instance of Cebu in Civil Case No. R-5520, which decision is hereto attached as Annex B of this stipulation.

"The parties hereby reserve the right to present further evidence."

After receiving the additional evidence of the parties the lower court, on June 30, 1962, rendered the appealed judgment.

On account of the resignation and transfer to other offices of some of the appellees, new appointments were issued by the City Mayor of Cebu in favor of other parties. As a result, a motion for substitution of parties filed by the appellees' counsel was granted by Us. Hence, Simplicio Gabuya, Leonardo Derecho, Jr., Pablo Saceda and Inocentes Llanto substituted for Marcelo Gabuya, Milton Abelgas, Arnulfo Aguilar and Delia Gador, respectively, as petitioners (Appendixes "A" to "A-3" and "B" to "B-3").

The only question to be determined in this case - whether it is the City Mayor of Cebu, or the Secretary of Public Works and Communications who has the power to appoint the officials and employees of the Osmeña Water-works System - is not new.

The provisions of the Charter of the City of Cavite covering appointments of its officers and employees whose appointment is not otherwise provided for by law, are to the effect that they shall be appointed by the Mayor, upon recommendation by the corresponding city department head, in accordance with the Civil Service Law. The Charter of the City of Cebu contains a similar provision.

In *Morales et al. vs. the City Engineer of the City of Cavite* G. R. No. L-11665, deciding a similar issue, we said:

"Appellants' claim that the Mayor of Cavite City was the one empowered to appoint the employees of the Cavite Waterworks System is based on the provisions of Art. IV, sec. 19, of Commonwealth Act No. 547, commonly known as the Charter of the City of Cavite, which provides that all other officers and employees of the City whose appointment is not otherwise provided for by law, shall be appointed by the Mayor, upon recommendation of the corresponding city department heads, in accordance with the Civil Service Law, and may be suspended or removed only in accordance with law. Paragraph (j), section 22, Article VI of the same Act, clearly provides, on the other hand, that the City Engineer of Cavite City shall have the care and custody of the public system of waterworks and sewerage, while Section 1 of Commonwealth Act No. 424, in relation to the personnel of the engineering departments of chartered cities, provides that -

"The assistant engineer, superintendents, and other employees as are from time to time provided for in appropriation ordinances of the City shall be appointed in accordance with existing laws governing the appointment of civil engineers, assistant civil engineers and other personnel in the various engineering districts of the Bureau of Public Works in the provinces."

"In connection with the legal provisions mentioned above, Section 79-D of the Revised Administrative Code, which governs the appointment of civil engineers, assistant civil engineers and other personnel in the various engineering districts under the Bureau of Public Works, provides the following:

"The Department Head, upon the recommendation of the Chief of the Bureau or Office concerned, shall appoint

all subordinate officers and employees whose appointment is not expressly vested in the (Governor General) President of the Philippines, and may remove or punish them except as specifically provided otherwise, in accordance with the Civil Service Law. Laborers receiving compensation at the rate of seven hundred and twenty pesos or less per annum and other employees receiving compensation at the rate of two hundred pesos or less per annum, shall be appointed and removed by the Chief of the Bureau or Office, subject only to the general control of the Department Head.

'The Department Head also may, from time to time in the interest of the service, change the distribution among the several Bureaus and Offices of his Department of the employee or subordinate authorized by law.'

"As already stated heretofore, appellees were appointed by the Under-Secretary of Public Works and Communications. Morales' appointment was for Item No. 52 in the approved city Plantilla of personnel of the Office of the City Engineer, Cavite City, de la Cruz' was for Item No. 48, Vicente's for Item No. 59 and Mendoza's for Item No. 61. Since their respective appointments several years prior to their removal they had rendered apparently satisfactory service, and had been paid with funds appropriated by the City of Cavite.

"It would seem, therefore, that, according to law, the employees of the Cavite Waterworks System are to be appointed by the Department of Public Works and Communications; that the City of Cavite has fully acquiesced to this interpretation by recognizing appointments made by the Secretary of Public Works and Communications and paying the salaries due to the appointees; that even while the present action was pending, in view of the reinstatement of appellees pursuant to the orders of the Director of Public Works, the City of Cavite and the City Engineer had again acknowledged the right of the Secretary of Public Works and Communications to appoint the employees of the Cavite Waterworks System. The conclusion is, therefore, inescapable that appellees were illegally removed from office on July 26, 1954 and that the order for their reinstatement issued by the Director of Public Works, in conformity with the favorable recommendation of the Bureau of Civil Service, was in accordance with law."

Subsequently, We had occasion to decide the case of Ramon Duterte et al. vs. Florencio Moreno as Secretary of Public Works and Communications, and Susano Negado as Manager of the National Waterworks and Sewerage Authority (G. R. No. L-15142). It involved the appointment of officers and employees of the Osmeña Waterworks System in Cebu City, and the particular issue submitted for resolution was identical to the one now before Us - whether it is the City Mayor of Cebu or the Secretary of Public Works and Communications who has the authority to appoint the officers and employees of the Osmeña Waterworks System. Resolving the same, We said:

"Petitioners' appeal hinges on this lone question: Who is the official vested by law with the power of appointment over the officers and employees of the Osmeña Waterworks System?

"Petitioners' contention that the Mayor of the City of Cebu possesses the power in question is based on section 1916 of the Re-vised Administrative Code, which reads, in part:

'In their respective districts, district engineers shall operate and maintain all municipal and provincial waterworks in accordance with the general regulations jointly issued by the Secretary of Interior and the Director of Public Works, and superintendents of waterworks, inspectors, plumbers, pump engineers, and all other employees as may be necessary for the proper operation and maintenance of these systems shall be under his direct supervision. Employees of the systems owned or administered by the province shall be appointed by him with the advice and consent of the provincial board and those of the mayor in accordance with section twenty one hundred and ninety nine as amended of the Administrative Code upon recommendation of the district engineer.'

and section 21 of the Charter of the City of Cebu, Commonwealth Act 58, which states that 'the Mayor shall appoint all other officers and employees of the city whose appointment is not otherwise provided for by law.'

"The above contention deserves scant consideration. The cited provision of the administrative code clearly

refers to waterworks owned or administered by provinces and municipalities and does not include chartered cities. And the power of the city mayor under section 21 of the Cebu City charter applies only if the appointment is not otherwise provided by law.

"Section 30, Article IV of the City Charter of Cebu states that the City Engineer shall have the care and custody of the public system of waterworks and sewers, and all sources of water supply. In relation to the duties and functions of City Engineers in all chartered cities, Commonwealth Act 424 states:

'The City engineers of chartered cities shall be under the supervision and control of the Director of Public Works.

'The assistant engineers, superintendents and other employees as are from time to time provided for in appropriation ordinances of the city shall be appointed in accordance with existing laws governing the appointment of civil engineers, assistant civil engineers and other personnel in the various engineering districts of the Bureau of Public Works in the provinces.' (underlining supplied)

"In *Enrique Morales v. City Engineer of the City of Cavite*, G. R. No. L-11665, December 29, 1960, where the power to appoint the employees of the Cavite Waterworks System was put at issue, this Court, thru Justice -Dizon, has expressed the opinion that Section 79(d) of the Revised Administrative. Code is the provision referred to in the above quotation (underlined portions) govern-ing the appointment of personnel in the en-gineering districts of the Bureau of Public Works. Said section says:

'The Department Head, upon the recommendation of the Chief of the bureau or office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by law in the President of the Philip-pines, and may remove or punish them, except as especially pro-vided otherwise, in accordance with the Civil Service Law. x x x

'The Department Head also may, from time to time, in the interest of the service, change the distribution among the several bureaus and offices of his Depart-ment of the employees or subordi-nates authorized by law.'

The conclusion was thus reached in that case that the power or appoint officers and employees of the Cavite Waterworks System is lodged in the Secretary of Public Works and Communications.

"Since, by virtue of section 8, Act 2009, the law creating the Osmeña Water-works System, 'the Director of Public Works of the Philippines shall have exclusive charge and control of all work to be done and improvements to be made' under the said Act, and in view of the similarity in the pro-vision of the charters of the cities of Cavite and Cebu regarding their Engineering Depart-ments, We see no reason to deviate from the ruling laid down in the Cavite Waterworks case, *supra*.

"It is noteworthy that previous to the questioned appointments made by the Mayor of the City of Cebu to employees of the Osmeña Waterworks System in 1956, the City had recognized and acquiesced to the ap-pointments extended by the Secretary of Public Works and Communications to such employees who were then receiving their salaries as authorized in said appoint-ments.

"In conclusion, we declare that it is the Secretary of Public Works and Com-munications who is empowered to appoint the officers and employees of the Osmeña Waterworks System. In this respect, and the declaration that the petitioners employees of the Osmeña waterworks are entitled to salaries for services ren-dered (a) for those appointed by the Secretary of Public Works and Communications, at the dates therein authorized; and (b) for those appointed by the City Mayor, on the basis of the Minimum Wage Law, up to the time they have been duly advised of the disapproval of their appointments, We are affirming the decision of the lower court.

"In conformity with the ruling laid down in a line of decisions^[1] where payment of back salaries to City employees was ordered although the city had not been made a party therein, We consider the City of Cebu a party in this action and, at this instance, liable for the payment of salaries of the Osmeña Waterworks for

services actual-ly rendered.

"WHEREFORE, with the only modification that the City of Cebu is thus ordered to pay what is due the employees of the Osmeña Waterworks System, in accordance with the above pronouncement, the decision is hereby affirmed. No pronouncement as to cost"

We deem our decision in the Duterte case squarely applicable to the one at bar.

WHEREFORE, the decision appealed from is reversed and set aside in so far as (1) it declares the City Mayor of Cebu vested with power to appoint the officers and employees of the Osmeña waterworks System, and (2) it orders the Commissioner of Civil Service to attest and approve the appointments Exhibits A, A-1 to A-174 extended in favor of appellees by the City Mayor of Cebu. The same decision, however, is affirmed in so far as it orders the City Treasurer and City Auditor, both of Cebu City, to pay the salaries of such petitioners who have rendered service from the date of their appointment; except as to those petitioners appointed by the City Mayor of Cebu, who should be paid their respective salaries from the date of their appointment until this decision has become final, unless reappointed by competent authority with effectivity from the day following the date of such finality.

Concepcion, C.J., Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] See *Mission v. Del. Rosario*, 50 O.G. 1571; *Abella v. Rodriguez*, 50 O.G. 3090; *Uy v. Rodriguez*, 50 O.G. 3574; *Briones v. Osmeña*, G.R. L-12536, Sept. 14, 1958; *Covacha v. Amante*, G.R. L-8387, May 25, 1956; *Meneses v. Lacson*, G. R. L-7025, October 31, 1955; and others.

In the case of *Mangubat v. Osmeña*, G.R. No. L-12837, April 30, 1959, this Court stated:

"It is our considered Opinion, therefore that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected; as if a formal amendment of the pleading had been made."

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