

ANGEL ENCISO, PLAINTIFF-APPELLEE, VS. DEOGRACIAS REMO, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. L-23670. September 30, 1969*

Ponente: RUIZ CASTRO, J.

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The petitioner Angel Enciso, a sergeant in the police force of Goa, Camarines Sur, with service in the said police agency dating back to March 16, 1939, applied for leave of absence on February 15, 1952, which the respondent Deogracias Remo, then mayor of Goa, granted. This leave of absence was later extended, with the respondent Remo's approval. On the very day that Enciso went on leave, that is, on February 16, 1952, Sergio Calingan, a non-eligible, was appointed "vice Angel Enciso, " to serve "until your successor shall have been duly qualified, unless sooner discharged by proper authority." When Enciso reported back for duty (after his leave had expired), he was told that his position had been "abolished" by the municipal council, allegedly pursuant to a directive (dated August 31, 1951) of the Secretary of Finance, and that in its stead the position of corporal had been "created." That Enciso was, at the time adverted to, already a civil service eligible, is conceded.

Enciso then filed a complaint with the provincial board against the respondent Remo, but as no action was forthcoming on his complaint, he elevated the matter to the Office of the President. In his indorsement of March 15, 1954 to the respondent Remo, Assistant Executive Secretary Enrique C. Quema ordered the reinstatement of Enciso.

Still the respondent Remo refused, prompting Enciso to file this petition for mandamus. He asked the court to order Remo to reinstate him and to pay him P3,000 in moral damages, P1,200 in actual damages, and P500 as attorney's fees.

On August 2, 1954, while the case was pending, the then acting municipal mayor (Alfonso Sarto) of Goa reinstated Enciso. The respondent Remo then moved for dismissal of the action, but the court denied his motion on the ground that there remained undecided the question of damages.

On October 7, 1954 Enciso filed an amended petition in which he asked that Remo be likewise ordered to pay his monthly salary of P55 during all the time that he was out of the service. On the same day he filed a supplemental petition charging that his reinstatement on August 2, 1954 was a sham as he was not given back his badge and sidearm nor paid his salary, and asking for P5,000 as additional moral damages.

On February 20, 1956 Enciso amended his petition again, this time to implead the municipality of Goa, the term of office of the respondent Remo having then expired.

On November 26, 1957 the lower court rendered judgment in favor of Enciso, but despite the inclusion of the municipality of Goa as party respondent the lower court failed to make it respond in damages. Thus the dispositive portion of the lower court's decision reads:

"In view of all the foregoing considerations, judgment is hereby rendered: (a) ordering the respondent,

Deogracias Remo, in his capacity as Mayor of Goa, to pay the petitioner all his salary from the time he was refused reinstatement to the police force of Goa, Camarines Sur in August 1952, until the time when he was reinstated to his present position as Corporal in the Police Force of Goa; (b) ordering the respondent, Mayor Remo of Goa, to pay the petitioner the amount of P500.00 as attorney's fees; and (c) ordering the respondent Mayor Remo to pay the costs of the suit."

Copies of the decision were received by the petitioner Enciso on December 3, 1957 and by the respondent Remo on December 4, 1957, respectively. On December 18 the respondents Remo and municipality of Goa filed a notice of appeal and appeal bond, which the court received on December 26. In the meantime, that is, on December 24, the petitioner filed a motion asking that the municipality be adjudged solidarily liable with the respondent Remo.

On January 16, 1958 the court a quo granted the petitioner's motion and amended its judgment to read thus:

"The judgment in this case is hereby amended as follows: (a) ordering the respondents, Ex-Mayor Deogracias Remo and the municipality of Goa to pay jointly and solidarily the salaries of the plaintiff-petitioner, Angel Enciso, from the time when he was refused reinstatement in the Police Force of Goa on August, 1952 until the time when he was reinstated in his present position as Corporal of the Police Force of Goa; (b) ordering the respondents, Ex-Mayor Deogracias Remo of Goa and the Municipality of Goa, to jointly and severally pay the petitioner, Angel Enciso the amount of P500.00 as moral damages and another amount of P500.00 as attorney's fees and (c) ordering the respondents to pay the costs of the suit."

Thereafter the court disapproved the respondents' appeal on the ground that they had not filed a record on appeal. The court took the view that the original action for mandamus had been converted into an ordinary suit for damages as a result of the reinstatement of the petitioner, and, consequently, while no record on appeal is required in an appeal in a special civil action, such record is required in appeals in ordinary actions. The respondents disagreed with the lower court and elevated the question to this Court. We held that the action retained its character as a suit for mandamus and therefore the respondents, as appellants, did not have to file a record on appeal. We then ordered the lower court to give due course to the respondents' appeal.[1] Hence this appeal which, originally taken to the Court of Appeals, was by that Court certified to this Court pursuant to section 31 of the Judiciary Act of 1948.

The respondents contend (1) that the petitioner's position (sergeant of police) in the police force of Goa had been abolished; (2) that the lower court could no longer amend its decision so as to make the respondent municipality solidarily liable with the respondent Remo because at the time it did so the decision had already become final as to the petitioner; and (3) that under the circumstances, the respondents should not be condemned to pay to the petitioner either damages or his salary during the period in question.

1. The respondents' claim that the position occupied by Enciso had been abolished, is without basis in law and in fact.

In the first place, except for the naked verbal assertion of the respondent Remo, there is absolutely nothing within the four corners of the record which supports this claim. The respondents' own documentary evidence, more specifically exhibits 1, 1-A, 1-E and 1-C, upon which are spread the minutes of the regular session of the Goa municipal council held on May 31, 1952 and the text of resolution no. 48 approving the municipal budget for the fiscal year 1952-1953, contain not the slightest intimation of the abolition of the item corresponding to the position held by the petitioner Enciso; upon the contrary, while maintaining the salary of the position at P660 per annum, the budget merely changed the rank from sergeant to corporal.

Republic Act 554, relied upon by the respondents, and which went into effect on June 17, 1950, amended section

2273 of the Re-vised Administrative Code (as amended by Republic Act 160) to read, in its pertinent portions, as follows:

"Section 2273. Salaries of members of police force. - The salaries of the chief of police and other members of the police force shall be fixed by the mu-nicipal council.

"Except as otherwise specially provided, the annual salaries of members of the police force shall not exceed the amounts hereinbelow fixed:

* * *

"In municipalities of the third class: For the chief of police, sixteen hundred and eighty pesos; for the corporal, thirteen hundred and eighty pesos; and for other members of the police force, thirteen hun-dred and twenty pesos. x x x"

What was plainly intended by the Act was merely an increased adjust-ment of maximum rates of pay, as the change of designation of rank had priorly been decreed by Republic Act 160 which took effect as ear-ly as June 20, 1947. Sec. 2273 of the Revised Administrative Code, as amended by Rep. Act 160, reads, in its pertinent portions, as follows:

"SEC. 2273. Salaries of members of police force. - The salaries of the chief of police and other members of the police force shall be fixed by the mu-nicipal council.

"Except as otherwise specially provided, the annual salaries of members of the municipal police shall not exceed the amounts hereinbelow fixed:

* * *

"In municipalities of the third class: for the chief of police, one thousand two hundred and sixty pesos; for the corporal, nine hundred and sixty pesos; and for other members of the police force, eight hundred and forty pesos."

So that since nothing in 'the record indicates that, during the period in question, there was a corporal as well as a sergeant in the police agency of Goa, it is clear that the position occupied by Enciso, although the given rank is that of sergeant, was actually that of cor-poral, in line with the legislative policy laid down in Republic Act 160. If the municipality of Goa whimsically chose to retain in its an-nual budgetary resolutions the designation of sergeant when it should have been corporal, the fault cannot be ascribed to Enciso. In fine, although Enciso erroneously called himself a sergeant of police and every municipal budget of Goa prior to that for 1952-1953 compounded the error by recognizing that rank, the fact remains that in law the item that he occupied was that of corporal.

At all events, as the Department of Finance, whose directive dated August 31, 1951 was cited as reason for the supposed abolition of the petitioner's position, subsequently explained, there was no in-tention to abolish existing positions and to create new ones but only to change the designation in order to conform to the new legislation. Thus, in his 6th indorsement to the Executive Secretary, dated Feb-ruary 2, 1953, the then Undersecretary of Finance Sixto B. Ortiz, inter alia, said:

"In requiring the change in designation as above-stated, this Department [in its letter dated August 31, 1951 to the Goa municipal council] did not intend the abo-lition of position of sergeant of police. It merely requir-ed that the designation of the position be changed to cor-poral. Neither did it intend to place the incumbent of the old position out of the service specially so when he is, as herein shown, a civil service eligible." (emphasis supplied)

In the second place, by reinstating the petitioner to the position of corporal, the respondents in effect admitted that the position was the same one he formerly held although it now bears a different name. The reinstatement order of August 2, 1954 states:

"Effective upon receipt of this letter you are here-by reinstated to your position in the police department of this municipality, and by virtue however of Republic Act 554 this will be a reinstatement to the position of corporal, instead of sergeant." (emphasis supplied)

Accordingly, the contention that there was no position to which the petitioner could be restored as it had been abolished, is clearly untenable.[2]

2. The next argument of the respondents is that as the petitioner received a copy of the decision on December 3, 1957 he had only up to December 18 of that year, or a period of 15 days, within which to ask for an amendment of the decision, so that when the petitioner actually filed his motion on December 24, the lower court had already lost jurisdiction over the case. This claim is premised on the assertion that the petitioner's action for mandamus retained its character as such, contrary to the lower court's ruling that it was in effect converted into an ordinary action for damages upon the reinstatement of the petitioner.

As already stated, this ruling of the lower court was made on the respondent Remo's motion to dismiss the case on the ground of petitioner's reinstatement on August 2, 1954. Consistently with this ruling, the court subsequently disapproved the respondents' appeal for their failure to file a record on appeal. This was the ruling until April 28, 1960 when this Court's decision in *Remo v. Palacio*[3] was promulgated, holding that the action for mandamus did not become an ordinary action for damages upon the reinstatement of the petitioner. In the meantime, the petitioner justifiably relied upon the disputed ruling of the lower court and accordingly computed the period of appeal at 30 days.

Parenthetically, it may be noted that while under the former Rules a period of only 15 days was allowed for appealing from decisions in actions for certiorari, prohibition, mandamus, quo warranto, and employer's liability cases,[4] in contrast to the period of 30 days provided for appeals in ordinary actions,[5] no such distinction appears in the present Rules.[6] Instead a uniform period of 30 days is now allowed for appeals in all actions.

3. The final issue to be resolved is whether under the circumstances the respondents should be made liable to the petitioner for back salaries and moral damages.

Although for this purpose we may assume as correct, it being factual, the lower court's finding of bad faith on the part of the respondent Remo in refusing to reinstate the petitioner, we deem it needful to explain briefly why we agree with the court's imputation of bad faith. As we have already explained, the position of sergeant of police was in fact never abolished by the municipal council of Goa and that the only change effected was the name-designation of the position. When the petitioner therefore returned from his leave, the excuse given by the respondent Remo that the position had been abolished was patently false. On top of this, Remo obstinately refused to reinstate the petitioner, in defiance of the orders of the Office of the President and in palpable disregard of the opinion of the Secretary of Finance already adverted to. And more, the impression is inescapable from a close reading of the record that the respondent Remo essentially refused to reinstate the petitioner because of political differences, the principal one being that the petitioner Enciso was a Liberal appointed by a Liberal mayor and the respondent Remo was a Nacionalista.

Well-settled is the rule that when a public officer goes outside the scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office, but is liable for his acts like any private individual.[7]

"It is a general rule that an officer-executive, administrative, quasi-judicial, ministerial, or other-wise who acts outside the scope of his jurisdiction and without authorization of law may thereby render himself amenable to personal liability in a civil suit. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office, and not personally. In the eye of the law, his acts then are wholly without authority." [8]

The pertinent provisions of the Administrative Code governing municipalities like Goa contain no phraseology that would negate the liability of the respondent municipal corporation. In *Busacay v. Buenaventura*, 93 Phil. 786 (1953) we strongly intimated that the province of Pangasinan, had it been impleaded in the action, could have been ordered to pay the back salaries of an employee who was illegally dismissed from office.

In point of fact this Court has in a number of cases reaffirmed the rule that municipal corporations may be held liable for the back pay or wages of employees or laborers illegally separated from the service, including those involving primarily governmental functions such as policemen. [9] The unlawful exclusion of the petitioner Enciso from his position was to all intents and purposes, essentially equivalent to his illegal separation from the service for the period in question.

The lower court therefore correctly adjudged both respondents solidarily liable to the petitioner for back salaries for the period specified in the judgment a quo.

With respect to moral damages, however, we hold that the award of back salaries already includes and absorbs this item. This was our ruling in *Diaz v. Amante*, 104 Phil. 968, and we see no reason to depart from it.

ACCORDINGLY, with the elimination of the award of moral damages, the judgment a quo is affirmed in all other respects, at respondents' cost.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Reyes, JBL, J., on official leave.

[1] *Remo v. Palacio*, L-13718, April 28, 1960, 107 Phil. 803 (per Concepcion, J.)

[2] Cf. *Manalang v. Quitariano*, 94 Phil. 904 (1954).

[3] *Supra*, note 1.

[4] Rule 41, sec. 17.

[5] Rule 41, sec. 3.

[6] See Rule 41, secs. 3 and 17.

[7] 46 C.J. 1046; 22 RCL 478-479; *Palma v. Graciano*, et al., 99 Phil. 75; *Carreon v. Pampanga*, et al., 99 Phil. 814-815; 49 Am. Jur. 289; 43 Am. Jur. 86; *Festejo v. Fernando*, 94 Phil. 507; *Nemenzo v. Sabillano*, L-20977, Sept. 7, 1968, 25 SCRA 7.

[8] 43 Am. Jur. 89-90; *Festejo v. Fernando*, *supra*.

[9] See *Mission v. Del Rosario*, 50 O.G. 1571; *Abella v. Rodriguez*, 50 O.G. 3039; *Uy v. Rodriguez*, 50 O.G. 3574; *People v. Bautista*, 50 O.G. 5286; *Cacho v. Osmeña*, L-10989, May 28, 1958; *Briones v. Osmeña*, L-12536, Sept. 24, 1958; *Noromor v. The Municipality of Oras*, L-18637, Feb. 28, 1963; *Cufiado v. Gamus*, and *Valecera v. Gamus*, L-16782-83, May 30, 1964; *Urgelio v. Osmena*, L-14908, Feb. 28, 1964; *Tañada v. Legaspi*, L-22537,

March 31, 1965; Gabu-tas v. Castellanes, L-17323, June 23, 1965; Guillergan v. Ganzon, L-20818, May 25, 1966, 17 SCRA 257 (1966). Cf. Diaz v. Amante, 104 Phil. 968 and Faunillan v. Del Rosa-rio, 99 Phil. 758.

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