

RUFINO A. CRUZ, ROMULO G. VIRAY, VIRGILIO Z. BANCOD, EDITHA F. DESAMITO, MYRNA R. SISON, AND VIRGINIA USON, PETITIONERS, VS. HON. CIPRIANO B. PRIMICIAS, JR., IN HIS CAPACITY AS ...

G.R. No. L-28573. June 13, 1968

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

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

Direct petition for Mandamus, with preliminary injunction filed by certain employees of the Province of Pangasinan, to declare Resolution No. 5 of the Provincial Board and Executive Order No. 2 of the Provincial Governor null and void; to have the abolition of petitioners' positions declared illegal, and compel their immediate reinstatement; to restrain respondents from excluding petitioners from the enjoyment of their rights as civil service employees, and to recover attorney's fees and costs.

It is not disputed that upon election and assumption of office in 1967 of the respondents Provincial Governor and Members of the Provincial Board, the latter adopted on January 1, 1968, Resolution No. 5 providing as follows:

"Resolution No. 5

"RESOLVED by the Provincial Board of Pangasinan, that for the purpose of promoting simplicity, economy and efficiency in the operation of the Provincial Government and for the purpose of providing the necessary expanded services on agricultural extension, rural health, provincial public works and legal services, etc., the Provincial Governor is hereby authorized to effect by executive orders from time to time for a period not exceeding six (6) months from the date of approval of this resolution, such reforms and changes in the different offices and branches of the Provincial Government as may be necessary, with the power to diminish, add to or abolish those existing and create new ones; consolidate related undertakings; transfer functions, appropriations, equipments, properties, records and personnel from one office or branch to another; eliminate duplicated services or authorize new ones not provided for; classify, combine, split or abolish positions; standardize salaries and do whatever is necessary and desirable to effect economy and promote efficiency of the government service and provide necessary services for the promotion of the general social welfare.

"That any action taken by the Provincial Governor pursuant to this resolution shall be immediately reported to the Provincial Board and shall be valid and subsisting until the Provincial Board shall provide otherwise."

Acting pursuant to this Resolution, the Governor issued his Executive Order No. 2 on January 2, 1968, reorganizing the office of the Governor and that of the Provincial Board. The order expressly abolished the following divisions provided for in the Annual Budget for the fiscal year ending on June 30, 1968 -?

1. Executive Division
2. Socio-Economic Program Implementation Division
3. Political Affairs and Placement Division
4. Public Information Division

5. Legal Division

as well as "all the positions listed in the current plantilla of personnel of said offices," with certain exceptions. At the same time, the Executive Order (pars. d-f) provided:

"(d) That there is hereby created, effective January 1, 1968, a private and confidential staff of the Governor under his immediate control and supervision with such duties and functions as may be assigned and prescribed by him from time to time in the interest of the service, composed of the following:

"One Senior Special Assistant P8,400.00

"One Private Secretary 6,000.00

"One Asst. Private Secretary 4,800.00

"Four Special Assistants 4,800.00

"One Technical Assistant 4,800.00

"Four Confidential Assistants 3,600.00

"Six Confidential Assistants 3,000.00

"Two Security-Drivers 2,400.00

"One Caretaker, Urduja House 2,400.00

"(e) That as authorized by the Decentralization Law, there is hereby created, effective January 1, 1968, One Provincial Attorney under the Governor with an annual salary of P8,400.00 to be assisted by the following staff:

"Two Special Attorneys P4,800.00

"One Clerk to be occupied by Mr.

Norberto Artacho whose position as

Mining Clerk is abolished as herein?

above provided 2,760.00

"(f) That there is hereby created a Personnel Division under the Office of the Governor with such duties and functions as prescribed under Rule XVII of the Civil Service Rules in relation to Section 21 of the Civil Service Act of 1959, composed of the following:

"One Personnel Officer P6,000.00

"One Assistant Personnel Officer

(Mr. Pedro Nacino) 5,160.00

"One Records Clerk (Mrs. Erlinda

Baroma) 2,280.00

"One Personnel Clerk (Mr. Jaime Abella) . . 3,120.00

"One Asst. Personnel Clerk (Mrs.

Arsenia Valdez) 2,280.00"

Petitioners are Provincial Clerk eligibles, except Bancod, who is a general clerk eligible. On or about January 11 to 15, 1968, they were individually served notices of termination of their services as follows:

"Pursuant to Executive Order No. 2, dated January 2, 1968, of the Provincial Governor of Pangasinan, partially implementing Resolution No. 5, current series, of the Provincial Board of Pangasinan, approved and adopted in its first meeting on January 1, 1968, I regret to inform you that your services are hereby terminated effective immediately upon receipt hereof without prejudice to payment of your 30 days salary.

"Copy of Executive Order No. 2 of the Provincial Governor is attached hereto for your information.

"You may also collect the money value of your earned vacation and sick leave of absence, if there is any.

"Very truly yours,

"By direction of the Provincial Governor:

"(SGD) DANIEL C. MACARAEG

"Secretary, Provincial Board"

and coincidentally, the equipment used by said petitioners was taken, transferred and redistributed to other retained offices.

As a result, the petitioners instituted the present proceedings on January 26, 1968, questioning the legality and validity of the Resolution and Order aforesaid, alleging that the abolition of their positions was done pursuant to an invalid delegation of power to the Governor, that it was done in bad faith, in violation of their security of tenure under the Civil Service law, as shown by the creation of new confidential positions "bearing conclusive evidence of political accommodation".

This Court issued a restraining order and required respondents to answer the petition. The restraining order was served on February 5, 1968.

In their answer filed on February 12, 1968, respondents pleaded that the reorganization of the offices of the Provincial Governor and Provincial Board had been made within the powers of the Provincial government, in order to effect economy in view of the province's deficit of P3.714 million pesos; to promote simplicity and efficiency, and to provide for more essential services and activities; that the Governor's Executive Order No. 2 had been approved and ratified by the Provincial Board on January 5, 1968, by its Resolution No. 8, while the supplemental budget to provide for the newly created positions was ratified by the Board's Resolution No. 50, of January 26, 1968; that the actions thus taken were immediately effective, without need of the approval of the Secretary of Finance; and that the abolition and creation of new positions were made in good faith, the selection of retained employees had been made on the basis of seniority and fitness as required by the Civil Service law, those retained having been appointed earlier than the petitioners. The answer also urged that the petitioners should have exhausted their administrative remedies, by appealing to the Commissioner of Civil Service.

After this case was argued in open court, one of the petitioners, Myrna Sison, formerly occupying the position of correspondence clerk, manifested in writing that she was no longer interested in the case and prayed that she be excluded therefrom. Therefore, the case is limited at present to petitioners Cruz, Viray, Bancod, De-samito and Uson, whose positions and emoluments were as follows:

Name

Position

Annual Salary

Effective Date

of Appointment

Rufino A. Cruz

Clerk

P2160.00

July 18, 1965

(Promotion in salary)

"

2280.00

Jan. 1, 1967

Romulo G. Viray

Clerk-

2640.00

July 18, 1965

Typist

(Promotion in salary)

"

2760.00

Jan, 1, 1967

Virgilio Z. Bancod

Steno-typist

2 (sic)

Dec. 18, 1968

Promotion in salary)

Doc. Steno-

Postal Clerk

2460.00

Jan. 11, 1967

Editha F. Desamito

Steno-

2340.00

July 1, 1965

Typist

(Promotion in salary)

"

2460.00

Jan. 11, 1967

Virginia Uson

Typist-

Mimeographer

2280.00

March 8, 1967

In issue is the validity and legality of the abolition of the offices held by petitioners, the letter contending that the reorganization (Executive Order No. 2 of the respondent Governor is void for lack of authority, and for being in bad faith, arbitrary and oppressive; while respondents assert that it was a valid exercise of administrative power, motivated by a desire to obtain economy and efficiency in the offices concerned.

A preliminary question must first be disposed of. Respondents contend that the petition does not formulate a cause of action, because the available administrative remedies have not been exhausted. The provisions of sections 16 and 24 of the Civil Service Law (Rep. Act 2260), section 5 of Rule VII of the Civil Service Rules, and section 4 of Republic Act 5185, are cited as conferring upon the Commissioner of Civil Service final authority to pass upon removal, separation and suspension of officers and employees in the classified service.

We find this point, urged by respondents, to be without merit. No removal or separation of petitioners from the

service is here involved, but the validity of the abolition of their offices. This is a legal issue that is for the Courts to decide. It is a well-known rule also that valid abolition of offices is neither removal nor separation of the incumbents (*Manalang vs. Quitariano*, 94 Phil. 903; *Rodriguez vs. Montemayor*, 94 Phil. 964; *Castillo vs. Pajo*, 103 Phil. 515). And, of course, if the abolition is void, the in-cumbent is deemed never to have ceased to hold office.

The preliminary question laid at rest, we pass to the merits of the case.

As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void (*Briones vs. Osmeña*, 104 Phil. 588; *Gacho vs. Osmeña*, 94 Phil. 208; 103 Phil. 837; *Gonzales vs. Osmeña*, L-15901, 30 Dec. 1961; *Urgelio vs. Osmeña*, 21 October 1963; *Ocampo vs. Duque*, 30 April 1966, 16 SC Rep. Anno. 962; *Abanilla vs. Ticao*, 26 July 1966, 17 SC Rep. Anno. 652; *Arao vs. Luspo*, 21 July 1967, 20 SC Rep. Anno. 722).

A review of the record herein satisfies us that the justifications advanced for the abolition of petitioners' offices (economy and efficiency) are but subterfuges, resorted to for disguising an illegal removal of permanent civil service employees, in violation of the security of tenure guaranteed by the Constitution.

The claim of economy effectuated through the reorganization is belied by the fact that while 72 positions were abolished, 50 of these were actually vacant. Only 22 stations were occupied at the time of the reorganization, carrying total emoluments of P25,538.71 per semester, of which P6,120.00 per semester corresponds to the five remaining petitioners (Answer, Exh. 3-C). As against these 22 positions suppressed by the reorganization (Executive Order No. 2), 28 new positions were simultaneously created, with a compensation of P87,600.00 per annum, P43,800.00 per semester, for confidential personnel in the office of the governor (Exh. Order No. 2, par. d). In addition, a Provincial Attorney and his staff (p. 2), and a Personnel Division of five members, importing P13,380.00 per semester were set up. Thus, against the suppressed items of P25,538.71, new items carrying a total appropriation of P57,180.00 per semester (or P114,360.00 annually) were created, in addition to P8,000.00 for casual laborers at the discretion of the Governor. Where the economy lies is difficult to see. Significantly, this "economy" was the same excuse advanced by the preceding administration when it attempted to eliminate civil service eligibles upon its coming into power (*Ocampo et al. vs. Duque*, supra.)

As to the alleged need for greater efficiency, it is well to observe that no charge of inefficiency is lodged against petitioners herein. Their efficiency is attested by their promotional appointments in 1967. What can not be glossed over is that respondent's reorganization replaced 22 civil service eligibles with 23 confidential employees. No further elaboration is required to show that in truth and in fact, what respondents sought to achieve was to supplant civil service eligibles with men of their choice, whose tenure would be totally dependent upon respondents' pleasure and discretion. Thus the spirit of the Civil Service law and of the Constitution are being purposely circumvented.

The motives behind these wholesale replacements are made manifest in paragraph 10 of respondents' own Answer, where it is averred, in an attempt to justify the new positions created, that:

"x x x These positions are indispensable to the respondent Governor, he being the elected Chief Executive of the Province and it could not be denied that his position is more political in nature and as such, it is humbly submitted, that he is entitled to a flexible compact staff of highly confidential assistants in whom he has complete trust and confidence not only in their capacity for work but also in their personal fitness and loyalty. This should be so because his executive position is a political one and as elected Governor, he is also the

Chairman of the Provincial Committee of the Nacionalista Party to which he belongs. In this situation, it could not be helped that his office should deal with his own party men on party matters. Not only that, as the Chief Executive of the Province, his office has to keep and take up official secrets of the government which should not be put in danger of being leaked out to third parties, and it is for this reason, among others, that the respondent Governor should have a flexible compact staff of highly confidential assistants."

Here is proof that the true motivation for reorganizing out the petitioners was "not only (in) their capacity for work but also (in) their personal fitness and loyalty". Political loyalty or disloyalty are not statutory nor constitutional preconditions for appointment or grounds for separation of eligibles in the Civil Service.

The situation now facing the Court is four square with those of *Briones vs. Osmeña* and *Ocampo vs. Duque*, supra. And on the authority of these cases, and the rulings of this Court in other precedents, we have no alternative but to find and declare that the suppression of petitioners' positions was done in bad faith and are, hence, illegal and unwarranted, null and void.

As a consequence of this pronouncement, it is likewise held, that respondents have unlawfully excluded the petitioners from the enjoyment of an office to which they are entitled; and that in failing or refusing to include in the 1968-1969 budget items required to cover appropriations for salaries of petitioners, respondents have unlawfully failed or neglected the performance of an act which the law enjoins as a duty resulting from office.

In view of the conclusions arrived at, discussion of the other points raised by petitioners become unnecessary.

Finally, considering that the respondents' attempt to unlawfully deprive petitioners of their civil service positions was done in disregard of clear doctrines of this Court, particularly our ruling in *Ocampo vs. Duque*, L-22305, 30 April 1966, rendered against the preceding provincial board of Pangasinan, and that petitioners herein were ousted even before the lapse of the 30-day notice of termination of services, it is but proper that petitioners be allowed to recover attorneys' fees.

WHEREFORE, the writ of mandamus prayed for by petitioners is hereby granted. The respondents as members of the provincial board of Pangasinan are commanded to immediately reinstate the petitioners (except Myrna Sison) to the positions heretofore occupied by them, to pay them the salaries heretofore withheld since January 5, 1968, and to appropriate without unnecessary delay, the amounts necessary for the salaries of the petitioners for the fiscal year 1968-1969, and subsequent years, together with such amounts as may be necessary to pay the contribution of the Province of Pangasinan to the Government Service Insurance System (GSIS) in connection with petitioners' insurance and retirement. Respondents shall further pay, personally and in solidum, to the petitioners P3,000.00 by way of attorneys' fees, and the costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles JJ., concur.
Fernando, J., on official leave.

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