

JUSTINO L. DAVID, PETITIONER-APPELLANT, VS. HON. MAYOR ANTONIO J. VILLEGAS, ATTY. LUIS L. ALVAREZ, ATTY. JOVITA A. PADLAN AND ATTY. BILLY MILLARES, RESPONDENTS-APPELLEES.

G.R. No. L-36479. February 28, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

The petitioner, Justino L. David, appealed to the Court of Appeals from the decision of the Court of First Instance of Manila in Civil Case No. 80498 entitled "Justino L. David, petitioner, versus Hon. Mayor Antonio J. Villegas, Atty. Luis L. Alvarez, Atty. Jovita A. Padlan and Atty. Billy Millares, respondents" dismissing the petition for certiorari and prohibition with preliminary injunction, with costs against the petitioner.[1] The appeal was docketed as CA-G.R. No. 48680-R.

The Court of Appeals, Eighth Division, with Justice Ruperto G. Martin as ponente, concurred in by Justice Mateo Canonoy and Justice Luis B. Reyes, in a resolution promulgated on October 18, 1972 ordered that the whole record of the case be forwarded to this Court for final determination inasmuch as the issues raised by the appellant involve pure questions of law.[2]

The petitioner instituted this special civil action for certiorari and prohibition to annul the proceedings in Administrative Case No. 22, Series of 1970.

At the hearing of the application for the issuance of a writ of preliminary injunction, the lower court was duly informed that the administrative case sought to be restrained had already been decided against the petitioner even before the instant petition was filed. Hence, the lower court denied the application and dissolved the restraining order it had issued on July 28, 1970 against the respondents. At the said hearing, the petitioner and respondents agreed in open court to file their respective memoranda and not to adduce evidence inasmuch as there is no dispute as to the main facts. The parties asked the lower court to decide the petition on the basis of the following undisputed facts:

"That petitioner is a permanent civil service employee holding the position of Chief of Section (Tax Sold Property) in the Real Estate Division, Office of the City Treasurer, Manila, a member of the Philippine Bar and a commissioned Notary Public for said city; that in a ruling dated March 13, 1968, the Commissioner of Civil Service held that he is the logical employee to be appointed to the vacated position of Assistant Chief of Division and DCT in the Real Estate Division, over the proposed appointee of the Respondent Mayor Villegas (Annex A of the petition); that instead of abiding therewith, however, Respondent Mayor appointed one Atty. Billy Millares of his (Mayor's) Office to the position but in a first indorsement dated March 23, 1970, the Commissioner of Civil Service returned the appointment without action (Annex E); that on January 6 and March 31, 1970, Respondent Atty. Jovita A. Padlan filed a protest against petitioner's appointment with the Complaints Committee, Office of the Mayor, and the Mayor himself, charging him (petitioner) with 'brazen dishonesty' in the latter's application for commission as Notary Public (Annexes F-1 and G); that on April 10,

1970, Respondent Mayor issued a Memorandum to petitioner ordering him to explain within seventy-two hours why no administrative action should be taken against him for dishonesty and unauthorized practice of his profession (Annex H); that on April 17, 1970, petitioner submitted his explanations, but apparently unsatisfied, the Mayor ordered Atty. Luis Alvarez to investigate the matter and the case was docketed as Administrative Case No. 22, Series of 1970; that although petitioner questioned the jurisdiction of Atty. Alvarez, alleging that Mrs. Padlan's complaint not having been subscribed and sworn to, was violative of Sec. 32, Rep. Act No. 2260, providing that 'no complaint against a Civil Service Official, or employee shall be given due course unless the same is in writing and subscribed to by the complainant' and further, that only the Secretary of Finance has such authority to investigate him. Atty. Alvarez overruled him and simply recorded his said objections after which he proceeded with the investigation x x x"[3]

On the basis of the foregoing, the lower court dismissed the petition for certiorari and prohibition with writ of preliminary injunction. The motion for reconsideration of the petitioner was denied for lack of merit.

On appeal to the Court of Appeals, the petitioner assigned the following errors:

"I

THE LOWER COURT ERRED IN FINDING THAT SECTION 20 OF THE REVISED CHARTER OF MANILA PREVAILS OVER SECTIONS 81 AND 77(c) OF THE REVISED ADMINISTRATIVE CODE AND IN ARRIVING AT THE LEGAL CONCLUSION THAT THE MAYOR OF MANILA AND NOT THE SECRETARY OF FINANCE HAS JURISDICTION TO INVESTIGATE THE PETITIONER-APPELLANT.

II

THE LOWER COURT ERRED IN FINDING THAT THE ADMINISTRATIVE PROCEEDINGS IN ADMINISTRATIVE CASE NO. 22, SERIES OF 1970 OF MANILA AGAINST PETITIONER-APPELLANT IS VALID IN SPITE OF NON-COMPLIANCE WITH THE LEGAL PREREQUISITE THAT AN ADMINISTRATIVE COMPLAINT BE SUBSCRIBED OR SWORN TO AND/OR FOR NOT FINDING THAT A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION HAD BEEN COMMITTED BY THE RESPONDENTS-APPELLEES."[4]

The submission that the Secretary of Finance has jurisdiction to investigate the petitioner-appellant has no merit.

This case should be decided in accordance with the laws in force when the petitioner was ordered investigated by the respondent mayor, Hon. Antonio J. Villegas.

Section 20 of Republic Act 409, as amended, otherwise known as the Revised Charter of the City of Manila, vests in the Mayor of Manila direct supervision and control over the Office of the City Treasurer. The Charter of Manila is a special law and a later enactment. Therefore, it prevails over Section 81 of the Revised Administrative Code which provides that the Department of Finance has "general supervision over the financial affairs and financial agencies of provincial, municipal, and city governments x x x." Moreover, it has been held by the Supreme Court that:

"x x x The Department head as agent of the President has direct control and supervision over all bureaus and

offices under his jurisdiction as provided for in Sec. 79 (c) of the Revised Administrative Code, but he does not have the same control of local governments as that exercised by him over bureaus and offices under his jurisdiction. Likewise, his authority to order the investigation of any act or conduct of any person in the service of any bureau or office under his department is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which, as already stated, the President exercises only general supervision as may be provided by law. If the provisions of Section 79 (c) of the Revised Administrative Code are to be construed as conferring upon the corresponding department direct control, direction, and supervision over all local governments and that for that reason he may order the investigation of an official of a local government for malfeasance in office, such interpretation would be contrary to the provisions of paragraph 1, section 10, Article VII of the Constitution." [5]

It is thus seen that the contention of petitioner that Section 20 of Republic Act 409, as amended, Revised Charter of the City of Manila, in so far as the provision lodges in the Mayor of Manila direct supervision and control over the Office of the City Treasurer is unconstitutional because the Department of Finance (Office of the City Treasurer of Manila) "is one of the bureaus or offices over which the President has control and supervision within the contemplation of Section 10, Article VII of the Constitution because tax collections and the conduct and management of the fiscal affairs of national, provincial and local governments is an executive function x x x" [6] is not correct. The legislature was within its power when it created city departments over which the Mayor of the City of Manila shall have direct supervision and control and established the Department of Finance under the charge of a city treasurer who shall act as chief fiscal officer and financial adviser of the city and custodian of its funds. [7]

The Department of Finance created under Section 20, Republic Act 409, as amended, is a city department. Section 22 of Republic Act 409 commonly known as the Revised Charter of the City of Manila empowers the City Mayor to suspend and remove all city officers or employees not appointed by the President subject to appeal to the Commissioner of Civil Service. [8]

The petitioner-appellant was appointed by the respondent mayor. Hence said respondent mayor has the power to investigate the administrative charge against the petitioner. This Court has held that:

"x x x The Mayor is invested with the power to investigate, suspend, discipline and remove him (See secs. 11 [q] and 22, Charter of Manila). Generally, the power to remove is inherent in the power to appoint (Lacson vs. Romero, 84 Phil. 740, 749). By virtue of that power of removal, two deputy sheriffs in the Manila sheriff's office were dismissed by Mayors Villegas and Bagatsing.

The Mayor's exercise of the power of removal would be subject to review by the Commissioner of Civil Service as provided in section 33 of the Civil Service Law and in Presidential Decree No. 6 dated September 27, 1972 which amended certain rules on discipline of government employees (68 O.G. 7971)." [9]

The petitioner-appellant contends that Administrative Case No. 22, Series of 1970, filed against him is not valid because the letter-complaint of Atty. Jovita Padlan is not sworn to by her. He cites Section 32, Republic Act 2260, as amended by Section 11 of Republic Act 6040, which provides; "No complaints against a Civil Service Official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant." It appears, however, that Mayor Antonio J. Villegas himself filed the administrative charge against the petitioner *motu proprio*. Hence, the complaint need not be subscribed or sworn to. And even assuming that Mayor Villegas based his memorandum of April 10, 1970 on the letter-complaint of Atty. Padlan, the Mayor as the head or chief of the office may, in his discretion, take action thereon if public interest or the special

circumstances of the case warrant.[10]

WHEREFORE, the decision of the Court of First Instance of Manila, Branch VI, in Civil Case No. 80498 dismissing the petition for certiorari and prohibition with preliminary injunction is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Fernando, Barredo, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., Santos, and Guerrero, JJ., concur.

Castro, C.J., no part.

Teehankee, J., concurs in the result.

Makasiar, J., reserves his vote.

[1] Appendix "A", Brief for the Petitioner, p. 35, Rollo, p. 11.

[2] Resolution, Rollo, pp. 34-35.

[3] Idem, Rollo, pp. 32-33.

[4] Brief for the petitioner-appellant, pp. 1-2, Rollo, p. 11.

[5] Mondaño vs. Silvosa, 97 Phil. 143.

[6] Brief for petitioner-appellant, p. 12, Rollo, p. 11.

[7] Sections 20 and 52, Republic Act 409.

[8] Llarena vs. Hon. Lacson etc., 108 Phil. 510.

[9] Bagatsing vs. Herrera, 65 SCRA 434, 440.

[10] Maloga vs. Gella, et al., L-20281, November 29, 1965, 15 SCRA, 370, 372.

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