

ANITA A. BARBERO, COMPLAINANT, VS. JUDGE FAUSTINO H. PARAGUYA, RESPONDENT.

Adm. Matter No. 500-MJ. August 29, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

Verified complaint,[1] dated June 19, 1973, of Mrs. Anita A. Barbero, Interpreter, City Court of Surigao, against Municipal Judge Faustino M. Paraguya of Placer, Surigao del Norte, when he was acting City Judge of Surigao City, for ignorance of the law, misconduct in office, oppression and grave abuse of authority.

This case stemmed from the following:

1. On November 13, 1972, the respondent who is the incumbent Municipal Judge of Placer, Surigao del Norte, assumed office as Acting City Judge of Surigao when the resignation of City Judge Jose L. Gonzales was accepted by the President.

2. On his first day in the City Court, respondent dismissed complainant Anita A. Barbero from her position as interpreter of the City Court of Surigao. His letter dismissing the complainant is quoted as follows:

"November 13, 1972

Mrs. Anita A. Barbero
City Court Interpreter
Surigao City

Madam;

In view of the fact that your appointment as Court Interpreter of the City Court of Surigao is temporary, I regret to inform you that pursuant to the provision of R. A. 2260 and the Civil Service Rules and Regulations, and in line with the policy of the New Society under the Martial Law, your services as such Interpreter of this Court is hereby terminated immediately upon receipt hereof.

Very truly yours,
(SGD.) FAUSTINO M. PARAGUYA
Acting City Judge"

3. Respondent upon receipt of said letter filed a complaint with the President which complaint was referred to the Secretary of Justice.[2]

4. On December 1, complainant filed a formal complaint with the Secretary of Justice.

5. On December 11, complainant went to the respondent to show him a copy of her permanent appointment¹ and to request that she be allowed to go back to work but respondent refused her. Instead he threatened her with a more drastic action should she insist in her request.[4]

6. On December 27, the Assistant Judicial Superintendent wired respondent to allow complainant to report for

duty until further orders.

7. On January 5, 1973, then Undersecretary of Justice Plana wrote respondent informing the latter that his dismissal of the complainant was not valid and, thus, ordered him to allow the complainant to report back to duty.

8. On January 15, 1973, complainant reported for duty but respondent despite the order, refused to accept her.

The complaint was referred to the respondent for comment⁶ on March 12, 1974.

On April 2, he submitted his answer.^[7] He said that his act of dismissing the complainant as interpreter on November 13, 1972 was "done in good faith and in accordance with the law and the facts prevailing at the time the dismissal was made." He averred that "Mrs. Barbero's appointment at the time was temporary and that she was not a civil service eligible. Therefore, she could be dismissed anytime with or without cause x x x and such dismissal is an exercise of power which is legally impeccable." He cited no less than 13 cases decided by this Court in support of his action.

On Mrs. Barbero's latest permanent appointment, he said that he strongly believed that it was actually made by Ex-Judge Gonzales on the 15th of November, 1972, although dated September 9, 1972, when he was already dismissed. He further said that "the appointment bears the notation from the Civil Service Commission: (x) Effective not earlier than November 13, 1972, so it was my honest opinion that I would be inconsistent if I would accept her on the strength of that appointment alone. There must be an order from the higher authorities directing me to allow her to report to duty before she could report to duty. And so when I received the letter from the Undersecretary of Justice telling me that my stand was not correct and that Mrs. Barbero should be allowed to report back to duty, I immediately called her to be back to duty."

The issue of this administrative complaint is whether or not the dismissal of the complainant as interpreter in the City Court of Surigao by respondent Judge was legal.

Per records, Mrs. Barbero, the complainant herein, was appointed interpreter by then City Judge Jose L. Gonzales and assumed office as such on January 4, 1966, under a provisional status, pursuant to Sec. 24(c) of the Civil Service Law. (Annex "A", p. 7, rollo). On September 9, 1972 she was issued a new appointment by the same Judge for a change of status from provisional to permanent in view of her having qualified in the General Clerical Examination (2nd Grade) on May 24, 1970. Said appointment was attested as permanent by the Civil Service Commission on November 23, 1972.

Immediately upon the assumption of office of the respondent as acting City Judge of Surigao on November 13, 1972, she lost no time in terminating the services of complainant "in view of the fact that her appointment is temporary." However, when complainant presented to him (respondent) her permanent appointment, he refused to accept her claiming that said appointment was invalid and void ab initio because when it was attested to take effect on November 23, 1972, Judge Gonzales who issued the same was no longer in the service, his resignation having been accepted on November 9 by the President.

Respondent's contention is patently without merit. When said appointment was issued on September 9, 1972, to take effect upon approval, Judge Gonzales was still in the service and clothed with the necessary authority to issue the same. The fact that it was attested by the Civil Service Commission effective November 23, 1972, or, after Judge Gonzales ceased to be the City Judge of Surigao City, did not render the appointment void ab initio.

Respondent also claimed that "Mrs. Barbero's appointment was temporary and that she was not a civil service eligible. Therefore, she could be dismissed anytime with or without cause." (Item No. 2, 2nd Indorsement dated April 2, 1974, p. 1, id.) To this, we disagree.

Employees in the civil service, regardless of their status, are entitled to security of tenure of office. They cannot just be removed at the mere caprice of the appointing power as in this case. Attention is invited to a pertinent portion of Memorandum Circular No. 35, series of 1966, of the Civil Service Commission, in this regard, as follows:

"x x x employment under provisional appointment may only be terminated by this Office by certifying appropriate eligibles, except during an employees' probationary period, or the first six months following his original appointment, when his services maybe terminated by the appointing official for want of capacity or unsatisfactory conduct." (*Italics supplied*)

Hence, before the employment of an employee under a provisional status may be terminated, the Civil Service Commission should first certify appropriate eligibles who maybe appointed to his position, except during the employees' probationary period, etc. This requirement was not followed in the case of complainant. She was unceremoniously dismissed by the respondent because "she was not a civil service eligible." What aggravated the situation was that when complainant brought the matter to the Department of Justice, whereupon the Assistant Judicial Superintendent, in a telegram ordered the respondent to allow the complainant to go back to work until further orders, the respondent still refused to accept her. (See Annex "I", p. 17, *id.*). He even threatened her with a more drastic action should she insist in reporting back to duty. (See Annex "H", letter of respondent to complainant, p. 16, *id.*). He only relented and took her back upon receipt of a letter of then Under-Secretary of Justice Efren Plana.

Even without a formal investigation, considering that the evidence extant are documentary in character, We find that the illegal dismissal of the complainant constitutes abuse of authority on the part of respondent. It appears, however, that later on, upon instruction of the Under-Secretary of Justice, respondent called complainant back to duty.

WHEREFORE, respondent Municipal Judge Faustino M. Paraguya is hereby reprimanded and warned that a repetition of the same act will be dealt with more severely.

Zaldivar (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

[1] Complaint, pp. 4-5, Rollo.

[2] 1st Indorsement, dated December 11, 1972, p. 11, *id.*

[3] Copy of complainant's permanent appointment, p. 8, *id.* 4

[4] Letter, dated December 13, 1972, p. 16, *id.*

[5] Telegram, dated December 27, 1972, p. 17, *id.*

[6] 1st Indorsement, dated March 12, 1974, p. 3, *id.*

[7] 2nd Indorsement, dated April 2, 1974, pp. 1-2, *id.*

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