

**ROMANA M. CRUZ, PETITIONER, VS. HON. FRANCISCO TANTUICO
AND HON. GREGORIO G. MENDOZA, IN THEIR CAPACITY AS ACTING
CHAIRMAN AND TREASURER OF THE PHILIPPINES OF THE
COMMISSION ON ...**

G.R. No. L-49535. October 28, 1988

Ponente: CORTES, J.

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CORTES, J.:

The relief sought from the Court, in addition to the setting aside of certain orders of respondent COA Acting Chairman, is the issuance of an order for the release of petitioner's retirement benefits. Preliminary to the grant or denial thereof, this Court is asked to pass upon the liability of petitioner Romana M. Cruz for paying upon presentment several treasury warrants with a total value of P21,545.08, but which turned out to be issued to fictitious payees.

An investigation of the anomaly revealed that it was the handiwork of a "syndicate" composed of employees of the Budget Commission and the Department of Education and Culture (DEC). Using falsified computations and service records, some sixty-eight (68) treasury warrants were issued and made payable to fictitious or "ghost" teachers in Region IX (Zamboanga del Sur), all of which appeared to be genuine and duly signed by the authorized signatories of the DEC. Twenty-eight (28) of these warrants are the subject of this case.

Acting on the request of the Treasurer of the Philippines that the encashment of the treasury warrants be dishonored and that the appropriate "charge back" be undertaken, the National Cashier recommended that action to effect restitution be taken against the parties to the falsification, particularly, Editha Gonzales and Ceferino M. Cruz, instead of proceeding against Romana Cruz who was considered to have done her routine task as paying teller and to have acted in good faith in encashing the treasury warrants [Rollo, pp. 36-37.]

Subsequently, however, the Auditor assigned to the Treasury Vault and Banking Audit Division of the Bureau of Treasury requested the National Cashier to "cause the dishonor of the subject warrants and the encashment thereof charged-back to the account of the banks concerned or to Miss Cruz, as the case may be." [Rollo, p. 38.] The first charge-back against Miss Cruz was made on August 17, 1976 in the amount of the P15,308.91 and subsequently increased by P6,236.17 on August 23, 1976 thus making her total cash accountabilities amount to P21,545.08. The Auditor also formally demanded that petitioner produce the missing funds while the Acting National Cashier required her to increase her cash accountability [Rollo, p. 40.]

In her written explanations to these demands, petitioner stressed that she paid the warrants in good faith as there was nothing on their faces or in the endorsements to raise any doubt as to their genuineness. Petitioner requested that in lieu of charging her for the shortage, "the same be dropped from the cash book and simultaneously recorded as a receivable (from the guilty party/parties) on the books of the Bureau of Treasury." [Rollo, pp. 41-42.]

Acting on the matter which was formally referred to him, the respondent Commission on Audit (COA) Acting Chairman issued the following:

2[nd] Indorsement

October 25, 1976

Respectfully returned, thru the Manager, Accountancy Office, this Commission, to the Treasurer of the Philippines, Bureau of the Treasury, Manila.

It appearing from these papers that it was Miss Romana Cruz, Cashier IV, Cash Division, that Bureau, who paid the treasury warrants in question totalling P21,545.08 to wrong or fictitious payees and, therefore, is the last indorser, liable for the value thereof, it is hereby directed that she be required to restore and restitute to that Bureau the said amount, without prejudice to her right of recourse against the guarantors of said warrants, if any.

In case of failure of Miss Cruz to effect the restitution of said amount as herein directed, her salary should be withheld pursuant to Section 624 of the Revised Administrative Code and applied in settlement of her liability.

Advice of the action taken herein is desired.

(Sgd.) Francisco S. Tantuico, Jr.
Acting Chairman

[Rollo, p. 50.]

Manifesting his disagreement with the above ruling, the Treasurer under the 5th indorsement opined ". . . that the loss of government funds arising from the encashment of the subject treasury warrants as a result of the negligent act of the DEC in issuing these treasury warrants to fictitious persons, should be borne by the DEC and not by Miss Romana Cruz who paid them in good faith and pursuant to her duty as Cashier IV of this Treasury to pay treasury warrants and government checks presented to her for payment." [Rollo, pp. 51-53.]

A request for reconsideration of the order of the respondent COA Acting Chairman contained in the 2nd indorsement was filed by petitioner on February 20, 1978. This was followed by a request, sometime in August, 1978, addressed to the COA Acting Chairman for the early issuance of a clearance in connection with petitioner's retirement from the Bureau of Treasury on March 30, 1978 [Rollo, p. 56.]

On November 27, 1978, petitioner received a letter from respondent Treasurer dated November 13, 1978 informing her that under the 8th indorsement, the COA Acting Chairman denied her appeal and letter of reconsideration while reiterating his previous directive under the 2nd indorsement. The Treasurer's letter particularly stated:

* * *

This Treasury expressed its support to your representation under its 5th indorsement to the Chairman of the Commission on Audit dated November 18, 1977, xerox copy enclosed, but unfortunately, the COA has a different view.

That being the case, much to our regret, the value of the subject 28 treasury warrants in the total amount of P21,545.08 is being deducted from your retirement benefits from this Treasury, the same to be applied in refund of your shortage of P21,545.08 in your accountability, arising from the encashment of the said subject 28 treasury warrants. [Rollo, p. 57.]

In this petition for review on certiorari, the petitioner seeks a ruling setting aside the orders of the respondent COA Acting Chairman contained in the 2nd and 8th indorsements and for the release of the amount of P21,545.08

in her favor.

- Petitioner denies any liability for the value of the subject treasury warrants. - Assailing the order of the respondent COA Acting Chairman as embodied in the 2nd indorsement, petitioner contends that basing her liability on the theory that she was the last indorser thereof is erroneous, as she was not an indorser.

The facts support the conclusion that petitioner was not an indorser of the treasury warrants. Her only participation in the encashment of the treasury warrants was in her capacity as cashier or paying teller of the Bureau of Treasury. Her act of paying the amounts reflected on the treasury warrants did not constitute an indorsement but a discharge by payment of the instruments.

Petitioner submits that since the questioned treasury warrants were genuine in all respects, she had no way of determining whether the same were payable to fictitious or non-existing payees.

It is not disputed that on the face of the treasury warrants, there appeared no irregularity. The warrants were signed by the authorized signatories of the DEC. Furthermore, Editha Gonzales, the party who presented the treasury warrants for encashment, was a bona fide employee of the DEC who regularly cashed warrants with the petitioner and was therefore known to her personally. Considering these circumstances, the encashment by the petitioner of the subject treasury warrants did not amount to an act of negligence for which she should be made liable.

The view that petitioner had not been negligent is shared by the Bureau itself, which has cleared her of any responsibility for the defalcation. In the investigations conducted after discovery of the anomaly, she was never implicated. Thus, when the perpetrators were charged before the then Court of First Instance of Manila for Estafa Thru Falsification on eighty-three (83) counts, she was not included in the charge.

In behalf of the public respondents, the Solicitor General counters that petitioner's failure as a paying teller to ascertain that the person who presented the warrants was not a holder in due course renders her liable for the value thereof, notwithstanding that the third endorser who encashed the said treasury warrants was known to her, and, therefore adequately identified. To support this contention, he cites the Manual of the Bureau of Treasury which provides as follows:

Sec. 3250.1. Requirements when party is an indorsee. - When the party encashing the warrant or check is an indorsee, he shall be referred first to the National Cashier before any payment is made by the Paying Teller. The National Cashier shall interview the party and should be satisfied that the party is a holder in due course or has legal or rightful title to the instrument. The encashing party should also be required to present any of the documents (identification papers) enumerated in Section 3250.0 above.

At this stage, Sec. 3250.1 of the Manual of the Bureau of Treasury cannot be made the basis for holding the petitioner liable considering the absence from the record of any mention of any investigation concerning her possible liability under said section. Thus, facts that would prove or disprove her liability under this section were never established. Moreover, in the series of indorsements by the public respondents leading to the present case, Sec. 3250.1 was never mentioned as the basis for petitioner's liability. In fact, the respondent COA Acting Chairman ruled that petitioner was liable for a totally different reason, i.e. that she was the last indorser of the treasury warrants [Rollo, p. 50.] It is only now that she has brought her case before this Court that petitioner is sought to be held liable on the basis of Sec. 3250.1. This cannot be allowed, for otherwise it would be tantamount to sanctioning a change of theory on appeal, which would be unfair to the adverse party [Philippine Rabbit Bus Lines, Inc. v. Phil-American Forwarders, Inc., G.R. No. L-25142, March 25, 1975, 63 SCRA 231.]

Having established that petitioner was not negligent in encashing the treasury warrants, justice dictates that she

should not be made personally liable for the consequent losses.

- An analysis of the arguments presented as they relate to the facts would show that the issue petitioner actually poses is the propriety of the Treasurer's order to deduct the amount of P21,545.08, the value of the twenty-eight (28) treasury warrants, from her retirement benefits, as embodied in the Treasurer's letter to her dated November 13, 1978 [Rollo, p. 57], considering that nowhere is it stated in the COA Acting Chairman's 2nd and 8th indorsements that the amount should be deducted from her retirement benefits. In fact, the 2nd indorsement provided that her salary should be withheld and applied in settlement of her liability[*], while the 8th indorsement merely reiterated the 2nd [Rollo, pp. 50 and 59.]

Despite the orders of the Acting Chairman of the Commission on Audit, petitioner's salaries prior to her retirement on March 30, 1978 were never withheld. Thus, the order of the Treasurer to deduct the value of the treasury warrants from her retirement benefits [Rollo, p. 57.]

Consequently, on March 30, 1978, petitioner applied with and was cleared by the Bureau of Treasury from all money and property responsibilities, except for the sum of P21,545.08 representing the value of the twenty-eight (28) treasury warrants [Rollo, p. 123.] The Bureau of Treasury released to the petitioner the sum of P23,980.77 under TW No. B-04,623,521, dated January 2, 1979, as "retirement gratuity" [Rollo, p. 124.] Presumably, since there was an order to deduct the amount of P21,545.08 from her retirement benefits, the amount of P23,980.77 released to her was only a portion of the total amount she was entitled to.

As mentioned above, no negligence attended the petitioner's encashment of the treasury warrants. Even assuming that she could be held liable for non-compliance with or violation of some rule or regulation, this Court agrees with the petitioner that Section 624 of the Revised Administrative Code cannot be construed to authorize a deduction of the value of the treasury warrants from her retirement benefits. Said section provides:

Section 624. Retention of salary for satisfaction of indebtedness. - When any person is indebted to the Government of the Philippine Islands (or Government of the United States), the Insular Auditor may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness.

The Solicitor General, in his comment, is in agreement with the petitioner that her retirement pay may not be withheld by administrative fiat to answer for the shortage incurred while in office [Rollo, p. 99.] This has also been the interpretation applied by the respondent COA Acting Secretary in similar cases [Rollo, pp. 62-63.]

That the retirement pay accruing to a public officer may not be withheld and applied to his indebtedness to the government is settled. In *Hunt v. Hernandez* [G.R. No. 45665, 36 O.G. 263 (1937)], the Court, through Justice Laurel, explained why.

The question to be determined is whether or not the gratuity of the petitioner in this case can be withheld and applied to the payment of his remaining indebtedness to the San Lazaro Investment Fund notwithstanding the provision of section 3 of Act No. 4051 that the "gratuity provided for in this Act shall not be attached or levied upon execution." [***] The respondents contend that the withholding of the corresponding amount of the petitioner's gratuity was made with a view to its application to the payment of his indebtedness to the Government, and that such action is authorized by section 624 of the Administrative Code which provides that "When any person is indebted to the government of the Philippine Islands or Government of the United States, the Insular Auditor may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

While section 3 of Act No. 4051 refers merely to attachment or levy upon execution, we are of the opinion that the exemption should be liberally construed in favor of the pensioner. Pension in this case is a bounty flowing from the graciousness of the Government intended to reward past services and, at the same time, to provide the

pensioner with the means with which to support himself and his family. Unless otherwise clearly provided, the pension should insure wholly to the benefit of the pensioner. It is true that the withholding and application of the amount involved was had under section 624 of the Administrative Code and not by any judicial process, but if the gratuity could not be attached or levied upon execution in view of the prohibition of section 3 of Act No. 4051, the appropriation thereof by administrative action, if allowed, would lead to the same prohibited result and enable the respondents to do indirectly what they can not do directly under section 3 of Act No. 4051. Act No. 4051 is a later statute having been approved on February 21, 1933, whereas the Administrative Code of 1917 which embodies section 624 relied upon by the respondents was approved on March 10 of that year. Considering section 3 of Act No. 4051 as an exception to the general authority granted in section 624 of the Administrative Code, antagonism between the two provisions is avoided. [Id. at 264; Emphasis supplied.]

WHEREFORE, the petition is GRANTED and the order of the respondent COA Acting Chairman Francisco S. Tantuico, Jr. to withhold payment of petitioner's salary and the consequent directive of the respondent Treasurer Gregorio G. Mendoza to deduct the amount of P21,545.08 from petitioner's retirement benefits are SET ASIDE. This decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[*] In *Bartolome v. Auditor General* [94 Phil. 719 (1954)], the Court sustained the authority of the Auditor General, pursuant to Sec. 624 of the Revised Administrative Code, to deduct one-half (1/2) of a city cashier's salary for encashing a treasury warrant presented by an impostor.

[**] Act 4051 provides for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction thereof.

C.A. No. 186, as amended, which created the Government Service Insurance System, provides for a similar exemption:

Sec. 26. Exemption from legal processes and liens. - No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act (which includes retirement benefits), shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of such member or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt: Provided, however, That this section shall not apply when obligations or indebtedness to the System and the employer are concerned, nor when the retirement annuity is assigned to any person, corporation, association or bank or other financial institution, which is hereby authorized.

Under P.D. No. 1146, as amended (the Revised Government Service Insurance Act of 1977), the pertinent provision states that "[t]he benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes." [Sec. 33.]

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