

ANTONIO J. VILLEGAS, IN HIS CAPACITY AS MAYOR OF THE CITY OF MANILA PETITIONER-APPELLEE, VS. ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER OF CIVIL SERVICE RESPONDENT-APPELLANT.

G.R. No. L-27714. November 05, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

There is an aspect of futility to this appeal from an ably-written and well-reasoned decision of the then Judge Conrado M. Vasquez ordering then respondent Commissioner of Civil Service Abelardo Subido, now deceased, "to (a) refrain from enforcing and implementing the directive contained in its letter to the City Auditor of Manila dated October 5, 1966 (Annex D); (b) making the preliminary injunction issued for this purpose to be permanent, and (c) commanding the respondent to note and record the appointments of the 91 women street sweepers listed in Annex B of the petition." [1] Annex D reads as follows: "It has come to the knowledge of this Office that there are still women employed as street sweepers in the City, contrary to the provisions of Memorandum Circular No. 18, s. 1964, on the subject: 'Women in Laborer Positions.' Pursuant to said memorandum circular, this Office will disapprove all appointments extended to females as street sweepers, when the same are submitted to this Office. In view thereof, and to prevent disbursement of City funds for illegal employment and to preclude injustice to these female employees who may later be required to refund whatever they may have received as salary or wages, it is requested that the salaries or wages of all women street sweepers or women laborers employed as such, be withheld immediately." [2] The pertinent portion of such memorandum is worded thus: "This Office has observed that some offices which employ women laborers make them perform work in the street along-side men workers. While it cannot be denied that those occupying laborer positions should be made to perform the duties properly belonging to such positions, it is the opinion of this Office that the practice of making them perform manual labor outside office premises exposes them to contempt and ridicule and constitutes a violation of the traditional dignity and respect accorded Filipino womanhood. * * * In view of the above, it is directed that agencies affected put a stop immediately to the practice referred to above; otherwise, this Office shall, except for justifiable reasons, be constrained to withhold approval of any or all appointments to laborer positions extended to women and shall, accordingly, bring the matter to the attention of the General Auditing Office." [3] Upon the filing of the certiorari and mandamus petition with preliminary injunction, the plea for preliminary injunction was set for hearing. It resulted in this order of then Judge Vasquez: "On motion of petitioner, it appearing that the respondent's Memorandum-Circular No. 18 dated April 10, 1964 had already been set aside by the Office of the President of the Philippines, let a writ of preliminary injunction issue to enjoin the respondent from enforcing and implementing said memorandum circular until further orders from this Court, upon the filing of the petitioner of a bond and its approval by the Court in the sum of P5,000.00 to answer for damages that the respondent may sustain by reason of the issuance of said writ." [4]

Clearly, the lower court decision is buttressed by the law and the applicable authorities.

1. It was pointed out in the petition of the then Mayor Villegas in the lower court that the memorandum on which then respondent Commissioner would base his refusal to note the appointments of the 91 women as street sweepers in the City government of Manila was his Memorandum Circular No. 18 dated April 10, 1964. It was then stated that it had been set aside and declared without force and effect by the Office of the President under a fifth indorsement to respondent on September 14, 1965.[5] All that respondent could allege in the answer was that there was still a pending motion for reconsideration. Why such a contention could not be taken seriously was made clear in the appealed decision in this wise: "It is of no moment that the respondent, in a 6th Indorsement dated November 7, 1966, had requested the Office of the President to reconsider the ruling declaring Memorandum Circular No. 18, series of 1964, as of no force and effect. Aside from the fact that the attempt to secure a reconsideration of the said ruling was done more than one year after the promulgation of the same, it is significant to note that the respondent sought the reconsideration only after the ruling of this case on October 28, 1966. In any event, as the situation stands, the memorandum circular in question may not be enforced until and unless the Office of the President shall reconsider its disapproval of the same." [6]

2. The situation thus presented is one akin to that found in another case between the same parties, likewise entitled *Villegas v. Subido*. [7] There as well as here, reliance of then respondent Commissioner was not on any law or rule but simply on his own concept of what policy to pursue, in this instance in accordance with his own personal predilection. Here he appeared to be unalterably convinced that to allow women laborers to work outside their offices as street sweepers would run counter to Filipino tradition. The sincerity of his conviction is conceded, but that does not suffice. A public official must be able to point to a particular provision of law or rule justifying the exercise of a challenged authority. So it was correctly held in the decision on appeal. The pertinent excerpt from the cited *Villegas v. Subido* decision follows: "One last word. Nothing is better settled in the law than that a public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity. That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: 'It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute.' Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid." [8]

3. It might be said by way of a concluding observation that for the past six years at least, Filipino women have been serving in that capacity among others as Metro Aides, an innovation introduced by the First Lady. They have contributed along with the male employees in keeping Metro Manila clean, attractive, and hygienic. There has been no offense to the well-known Filipino tradition of holding the women in high esteem and respect. Moreover, as is quite obvious in civic parades where a contingent of them usually takes part, they take pride - and justly so - in what they are doing. There would even be less justification then even from the policy standpoint for a Memorandum Circular similar to that issued by respondent and justifiably nullified by the Office of the President. Moreover, the trend towards greater and greater recognition of equal rights for both sexes under the shelter of the equal protection clause argues most strongly against this kind of discrimination. [9]

4. If this case had not been decided earlier, it must have been due to the fact that with the lower court deciding in favor of the then City Mayor and no restraining order having been issued by this Court, the ninety-one street sweepers could continue with their work. Neither party then apparently failed to manifest further interest in the outcome of this litigation. Moreover, it was not long after this case was submitted for decision that the late respondent Commissioner left public office. Apparently, his successor was of a different mind. Hence the case

was not disposed of sooner.

WHEREFORE, the appealed decision is affirmed. No costs.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.
Barredo, J., no part.

[1] Decision of the Lower Court, 7-8.

[2] Annex D of Petition.

[3] Annex F of Petition.

[4] Order of Respondent Judge dated November 8, 1966.

[5] Petition, par. 6 and Annex F.

[6] Decision of the Lower Court, 6.

[7] L-26534, November 28, 1969, 30 SCRA 498.

[8] Ibid, 510-511. Cf. *City of Manila and Mayor Antonio J. Villegas v. Subido*, 123 Phil. 1080 (1966) per Bengzon, C.J.

[9] Article IV, Section 1 of the Constitution reads as follows: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

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