

CITY OF BACOLOD, AND MANUEL VILLANUEVA, IN HIS CAPACITY AS ACTING CITY MAYOR OF BACOLOD CITY, PETITIONERS,

G. R. No. L-9775. May 29, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

In Civil Case No. 3269 of the Court of First Instance of Occidental Negros, entitled "Jesus Quiatchon, Jose T. Real, Manuel Cabiles & Alfredo T. Schwab, petitioners, vs. Manuel Villanueva, in his capacity as Acting Mayor of the City of Bacolod, respondent/" which was an action for mandamus to compel the defendant to reinstate the plaintiffs as policemen of said city and to pay them their salaries during the period of their ouster in addition to moral and exemplary damages, the said court under date of September 23, 1955 rendered a decision the dispositive part of which reads;

WHEREFORE, the writ of mandamus prayed for is hereby granted and judgment is rendered ordering the respondent Acting City Mayor of Bacolod City, to forthwith reinstate the petitioners in their former positions, declaring the petitioners with the right to collect their salaries corresponding to the period from the day they were illegally ousted from their, positions, up to the time when they shall be actually reinstated, further ordering the respondent to pay the petitioners out of his personal funds and by way of moral damages the amount of P5,000 to each of the petitioners, and by way of exemplary damages, the further sum of P2,500 also to each of the petitioners. The costs of these proceedings, shall be taxed against the respondent."

That case is now in this Court on appeal taken by the defendant jointly with the City of Bacolod. But before the appeal was perfected, the court, at the instance of the petitioners and over the objection of the defendant, issued sxi order for the immediate execution of the judgment, the dispositive part of the order reading as follows:

"Wherefore, finding the motion of the petitioners well taken, the Clerk of Court is "hereby ordered to issue the corresponding order of execution of the decision rendered in the above entitled case insofar as it orders the reinstatement of the petitioners in their respective positions by the respondent Acting Mayor, and the payment of their back salaries from the time of their removal until they shall be actually reinstated by the official in charge of making said payment. The execution shall be directed to the Acting City Mayor of the City of Bacolod insofar as the reinstatement is concerned and to the Treasurer of said City with regards to the payment of their back salaries. Compliance with the order of execution should be as prescribed under Section 9, Rule 39 of the Rules of Court."

Reconsideration of the order having been denied, the City of Bacolod, in conjunction with the defendant, filed in this Court the present petition for certiorari to enjoin the respondent Judge from compelling the petitioner Manuel Villanueva to reinstate the respondents policemen and to annul the said order of immediate execution insofar as it would authorize a levy on the properties of the city to satisfy the judgment for the payment of the policemen's salaries during the period of their ouster.

Answering the petition, the respondents set up the defense that the issuance of the order complained of is authorized by section 2 of Rule 39 and that, as provided in that same section, petitioner's remedy is to file a bond

to stay execution.

Upon the filing of the present petition, this Court, as prayed for therein, issued a writ of preliminary injunction, without bond, to restrain the enforcement of the order complained of. After going over the case, we now come to the conclusion that the petition should be granted and the preliminary injunction made permanent.

It is true that section 2 of Rule 39 allows execution to issue pending appeal. But such execution can only be issued against one who is a party to the action and not against one who, not being a party in the case, has not yet had his day in court (*Tayson and Angeles vs. Ycasiano, et al.*,^[1] G. R. L-2283, May 31, 1949; *Manza vs. Santiago, etc.*,^[2] G. R. L-7830, April 30, 1955; *Angara vs. Gorospe, et al.*,^[3] G. R. L-9230, April 22, 1957). The record shows that the city of Bacolod was not made a party to the case of mandamus filed against its acting mayor. True, the order of execution is specifically directed to the acting mayor and the city treasurer, and not to the city itself, but there is no denying that the said order means to have the back salaries of the respondents policemen paid from city funds, so that in the last analysis, it is the city that is being made to satisfy that part of the judgment in the case.

It should also be noted that, in authorizing execution before appeal, the said section 2 of Rule 39 requires that such execution be allowed only "upon good reasons to be stated in the special order." This requirement is important and must not be overlooked for, as Chief Justice Moran says, "if the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the above provision requires a statement of those circumstances as a security for their existence." (1 *Moran on the Rules of Court*, 1952 ed., p. 794, citing *Aguilos vs. Barrios, et al.*, 72 Phil. 285.) The respondent Judge states in his order as a justification for allowing execution that the appeal in this case is untenable and, inferentially, that it is resorted to only for purposes of delay. But this is prejudging the appeal now before us, and the assertion that it is intended merely as a means of delay appears to be deduced only from the belief that the appeal is untenable. And then there is the consideration that the reinstatement of the respondent policemen pending resolution of the appeal taken against the judgment in their favor means the ouster of those now occupying their positions before their right to continue holding the same has been finally determined in the appeal that is now before this Court. Lastly, if the respondent policemen are now reinstated and paid their back salaries from city funds and then the appeal in the main case is decided against them, the city stands to suffer irreparable injury because if it is hardly to be expected that the said policemen shall be able to make restitution.

While the issuance of immediate execution under section 2 of Rule 39 is discretionary with the trial court, we are persuaded that in the present case that discretion has not been properly exercised, for which reason the petition for certiorari must be, as it is hereby, granted, the order complained of annulled and the writ of preliminary injunction already issued made permanent. Without costs.

Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

Montemayor, J., concurs in the result.

[1] 83 Phil., 921.

[2] 96 Phil., 988.

[3] *Supra*, p. 79.

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