

**GELACIO P. GEMENTIZA, PETITIONER, VS. COURT OF APPEALS,
GLORIA MUÑEZ, LOURDES URSUA, THELMA GONZALES, ELBERTO
PONCE, JOSE POLIQUIT, PERFECTO CATCHA ELENA BANAL, SABINO
TABARA, R...**

G.R. Nos. L-41717-33. April 12, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition seeks a review by Certiorari of the Decision promulgated on July 29, 1975 by respondent Court of Appeals [1] in CA-G.R. Nos. SP-03350-R - SP-03366-R. Petitioner Gelacio P. Gementiza, then Mayor of the Municipality of Tagum, Davao del Norte, particularly questions that portion of said Decision ordering the reinstatement of herein ten (10) respondents Gloria Muñoz, Lourdes Ursua, Thelma Gonzales, Elberto Ponce, Jose Poliquit, Perfecto Catcha, Elena Banal, Sabino Tabara, Rogelio Bucol and Nicolas Punting to their former positions in the Municipality of Tagum, Davao del Norte, with "back salaries from the time of their unlawful dismissal, (and) with P500.00 attorneys' fees in favor of each of them."

The background facts disclose:

In the local elections of 1971, petitioner Gelacio P. Gementiza was duly elected Mayor of the Municipality of Tagum, Davao del Norte, defeating the then incumbent Mayor Herminigildo Baloyo.

The respondents herein occupied positions in the unclassified service belonging to the Office of the Mayor and were appointees of former Mayor Baloyo. The nature of their appointments and the particular provision of the Civil Service Law (R.A. 2260), under which their appointments were attested, follow:

Name of Respondents

:

Nature of Employment

:

Civil Service

:

:

Law Provision

Gloria Muñoz

:

Laborer-permanent

:

sec. 5(g) RA

:

:

2260 as amended

Lourdes Ursua

:

Laborer-permanent

:

- do -

Thelma Gonzales

:

Laborer-permanent

:

- do -

Elberto Ponce

:

Plant pest control

:

:

laborer-permanent

:

- do -

Jose Poliquit

:

Driver-mechanic-

:

:

Permanent

:

sec.24(b) RA

:

:

2260 as amended

Perfecto Catcha

:

Dump truck helper

:

Sec.5(g) RA

:

Permanent

:

2260 as amended

Elena Banal

:

Laborer-permanent

:

sec.5(g) RA

:

:

2260 as amended

Sabino Tabara

:

Laborer-municipal

:

:

dump truck permanent

:

- do -

Rogelio Bucol

:

Asst. groundman

:

:

gardener-“temporary”

:

- do -

Nicolas Punting

:

Dump truck driver

:

:

Helper

:

- do -

It will be noted that only Jose Poliquit, a driver mechanic, is a civil service eligible (testimonial), whose appointment was approved under section 24(b) of the Civil Service Law, as amended, providing:

"Sec. 24. Personnel Actions and Employment Status

x x x

(b) Permanent Appointment. - A permanent appointment shall be issued to a person who has met all the requirements for the position to which he is being appointed in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto. x x x

x x x "

Section 5 (g), R.A. No. 2260, as amended, under which all the other respondents were appointed, reads thus:

"Sec. 5. The Non-Competitive Service. - The non-competitive service shall be composed of positions expressly declared by law to be in the non-competitive service and those which are policy-determining, primarily confidential or highly technical in nature.

The following specific officers and employees shall be embraced in the non-competitive service:

x x x

(g) Permanent laborers, whether skilled or unskilled;

x x x."

Soon after petitioner Mayor Gementiza's induction into office on December 30, 1971, respondents and nine (9) others, namely, Fredizvinda Nuttol, Evelyn Arriola, Sebastian Pepito, Ricardo Alejandro, Florentino Ramada, Jr., Fe Palaspas, Loreto Quizan, Melecio Sefuentes and Anastacio Emnace, received letters of termination dated January 4, 1972 at the earliest, and March 16, 1972 at the latest. The reason/s for termination stated in said letters was/were either for "lack of work and project", "lack of vehicle and work", or "lack of work and equipment" implying thereby that their services would be unnecessary as facilities of the Provincial Engineer's Office would be made available to the Municipality. Effectivity of termination was mostly upon receipt and with respect to some, in one, two or three days thereafter.

From January 1, 1972 to March 14, 1972, petitioner extended new appointments to thirty two persons [2]including replacements for respondents Lourdes Ursua and Thelma Gonzales.

Respondents then instituted separate actions for Mandamus and Damages against petitioner Mayor with the Court of First Instance of Davao, Branch I, Tagum (Sp. Civil Cases Nos. 20-35, 37-40). Actually, eighteen cases were filed since there were two plaintiffs in Special Civil Case No. 38 (Quizan and Sefuentes). All cases were commenced within one year from termination and were jointly tried.

Respondents individually alleged in their respective Petitions below that they could not be removed from office except for a valid cause, no charges having been filed against them; that their services were needed by the Municipal Government, their positions being included in the plantilla of personnel covered by the budget for the fiscal years 1971-72; that petitioner Mayor pursued the illegal and immoral practice of dismissing appointees of the previous administration in order to accommodate proteges and in gross violation of the Civil Service Act, thereby resulting in damages suffered by respondents. Respondents then prayed for reinstatement, attorney's fees in the variable amount of P2,000.00, or P1,000.00, and exemplary damages in the uniform amount of P10,000.00.

Petitioner Mayor filed separate Answers to the Petitions essentially alleging that "termination was with valid and reasonable grounds motivated and desired for the purpose of economy". As affirmative defenses, petitioner also alleged that respondents failed to exhaust remedies available; that respondents Muñoz, Ursua, Gonzales and Banal, who were laborers, were performing duties properly belonging to the competitive service; and that respondents Muñoz, Poliquit and Gonzales were barred from instituting their actions as they had enjoyed their terminal leave and had not returned to work (Sp. Civil Cases Nos. 20, 22-27, 35, 38, 40). With respect to those holding temporary appointments, petitioner contended, in addition, that they could be terminated at a moment's notice with or without cause.

On January 18, 1974, after hearing the cases jointly, the lower Court rendered a Decision dismissing all cases except that of Ricardo Alejandro, the Municipal Cemetery caretaker (Sp. Civil Case No. 32). Said Court held as legal and proper the termination of herein respondents Rogelio Bucol and Nicolas Punting and others whose appointments were temporary, and their dismissal having been in accordance with section 24 (g) of the Civil Service Act, as amended on "Reduction in Force".[3]

Dissatisfied with said Decision, respondents and the other aforementioned plaintiffs appealed to the Court of Appeals.

On July 29, 1975, respondent Court of Appeals released the Decision in question, affirming as valid the dismissal of the cases in so far as the temporary employees were concerned but ordering the reinstatement with back salaries of the permanent ones, like the respondents, including Rogelio Bucol and Nicolas Punting. To quote:

"WHEREFORE, the judgment appealed from is:

1) Affirmed in so far as petitioners temporary employees Fredizvinda Nuttol, Evelyn Arriola, Sebastian Pepito, Florentino Ramada, Jr., Fe Palaspas, Anastacio Emnace and Melecio Sefuentes are concerned with costs against them.

2) Set aside, in so far as the petitioners Gloria Muñez, Lourdes Ursua, Thelma Gonzales, Elena Banal, Elberto Ponce, June Poliquit, Perfecto Catcha, Sabino Tabara, Rogelio Bucol and Nicolas Punting are concerned, and another issued, ordering respondent-appellee to reinstate petitioners-appellants with back salaries from the time of their unlawful dismissal with P500.00 as attorney's fees in favor of each of them. Costs against appellee."

Petitioner Mayor thus filed the instant Petition with this Court raising the following assignments of error:

"1) The lower court erred in considering the appointments of Rogelio Bucol and Nicolas Punting permanent in character following its finding that the appointments were attested under section 5(g), RA 2260;

2) The lower court erred in holding the dismissal of private respondents unlawful;

3) The lower court erred in ordering the reinstatement of private respondents with back wages and attorney's fees and your petitioner to pay the costs."

Upon the facts, evidence, and applicable law, we affirm.

Petitioner's dismissal of respondents was without basis in fact and in law. A reduction of force may, indeed, be effected in the interest of economy as provided by section 24 (g) of the Civil Service Act (RA 2260) as amended, and as contended by petitioner. But, said provision must be applied in accordance with sections 1 to 8, Rule VIII of the Civil Service Rules, all quoted hereunder:

"SEC. 24. Personnel Actions and Employment Status -

a) x x x

g) Reduction of Force – Whenever it becomes necessary because of lack of work or funds or due to a necessary change in the scope or nature of an agency's program, or whenever it is advisable in the interest of economy to reduce the staff of any department, office, bureau or agency, those in the same group or class of position in one or more bureaus or offices within the particular Department wherein the reduction is to be effected shall be reasonably compared in terms of relative fitness, efficiency and length of service and those found to be least qualified for the remaining positions shall be laid off. The Commissioner of Civil Service shall promulgate rules and regulations to carry out the provisions of this subsection".

RULE VIII Reduction in Force

"Section 1. x x x

Section 5. All proposed separations or demotions of permanent employees on account of reduction in force shall be submitted to the head of Department for approval and employees affected shall be given at least 30 days written notice in advance of the effective date of reduction: Provided, That the aggrieved employee may appeal within 15 days from receipt of such notice to the Commissioner pursuant to section 16, paragraph (j) of Republic Act 2260.

Section 6. Upon approval of the Department head and after notice of reduction in force had been issued, the

Department concerned immediately submit to the Commission a report containing the names, performance ratings, and seniority credits of all permanent employees laid off, together with their respective position titles and such information as called for in Section 4 of this Rule, if applicable.

Section 7. The names of permanent employees laid off shall be entered in a reemployment list for appropriate occupation and organization unit in which such reduction in force occurred. The list, arranged in the order of the employee's retention credits, shall be kept by the Department and the agency where the reduction took place, and the Commission which shall certify for purposes of reemployment from such list as occasion arises pursuant to the provisions of section 23 of Republic Act 2260.

Section 8. An employee whose name appears on the reemployment list shall be given preference by reinstatement to any vacant or new position in the Department or agency from which he had been laid off or in any Department or agency provided such employee is qualified for appointment to the position."

As found by respondent Court, the 30-day notice in advance of termination was not followed by petitioner as provided in section 5, Rule VIII, above-quoted. In fact, effectivity of termination was upon receipt, or in one, two, or three days thereafter. We uphold the following observations of respondent Court in this regard:

"Appellee argues that while there is no evidence on record that the procedure outlined in the Civil Service Rules was followed, neither has there been an evidence that the same has not been followed. He therefore insists that the presumption that official duty has been regularly performed should prevail.

As pointed out by appellants, it is clear from the evidence presented either by petitioners-appellants or the respondent that the above-quoted pertinent provisions on reduction of force was not followed. There was no 30 days notice given to petitioners-appellants, no report to the Commissioner of Civil Service, no re-employment list to be considered in the rehiring. It is evident therefore, that when respondent made the numerous new appointments (Exhibits X to X-31) he never considered the aforequoted legal provisions.

In the light of the above circumstances, the presumption of regularity of performance of duty has already been destroyed. We therefore rule that the Civil Service Rules have not been followed."[4]

But even if petitioner had followed the prescribed procedure, the evidence adduced by respondents belie petitioner's alleged policy of economy. As previously stated, during the period from January 1, 1972 to March 14, 1972, petitioner issued a total of 32 new appointments including replacements for respondents Lourdes Ursua and Thelma Gonzales. Said respondents were terminated on January 4, 1972, effective upon receipt, for lack of project and work. Their replacements Perfecto Cadullo and Justo Gabaisen, respectively, were appointed on January 12, 1972.[5]A comparison of the Approved Budget and Plantilla of Personnel for Fiscal Year 1971-1972 [6]and that for the year 1972-1973[7] even reveals an increase in the number of employees in the Office of the Mayor. In the Budget and Plantilla of 1971-72, there were thirteen (13) employees in addition to ten (10) laborers. In the Budget and Plantilla of Personnel for Fiscal Year 1972-73, Exhibit "Z", there were fifteen (15) employees in addition to 15 laborers. Petitioner's alleged reason for terminating respondents, therefore, falls flat on its face.

Petitioner's contention that the appointment of respondents Bucol and Punting were temporary as said appointments were attested under section 5 (g) before its amendment is likewise untenable. A close examination of the latest appointments of Bucol and Punting [8]clearly show that both were attested under section 5 (g) of R A 2260, as amended. Said appointments were issued on July 29, 1971 while Section 5 (g) was amended by R A 6040 two years before, or, on August 4, 1969.

Originally, section 5 (g) of R A 2260 read as follows:

"sec. 5. The Non-Competitive Service -

a) x x x

g) Unskilled laborers whether emergency, seasonal or permanent." (RA 2260)

As amended by R A 6040, it reads:

"Sec. 5 The Non-Competitive Service -

a) x x x

g) Permanent laborers, whether skilled or unskilled."

Although in the appointment papers of respondent Bucol, the word "temporary" appears thereon, such classification must have been due to inadvertence and cannot prevail over the attestation of the Civil Service Commission reading "under section 5(g) of RA 2260, as amended," and considered permanent in character. It is, therefore, undisputed that respondents Rogelio Bucol and Nicolas Punting are in the same category as herein respondents (except respondent Poliquit), whose appointments were attested under section 5(g), as amended, and which positions belong to the unclassified service. As held in *Arcel vs. Osmeña*, 1 SCRA 581 [1961] the lack of civil service eligibility of an appointee to an unclassified position does not remove him from the operation and protection of the Civil Service Law. For there is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Persons in the unclassified service are so designated because the nature of their work and qualifications are not subject to classification, which is not true of those appointed to the classified service.[9]

Petitioner's contention that it is not possible to reinstate respondents as their positions have been scrapped in the Budget and Plantilla of Personnel for the Fiscal Year 1972-73 is likewise untenable. This Court has declared in *Cristobal vs. Melchor*, 101 SCRA 857 [1980], that an employee reinstated for having been illegally dismissed is considered as not having left his office and should be given a comparable position and compensation at the time of reinstatement.

It should be noted that before the Court below, respondents sued petitioner Mayor alone. However respondents, too, prayed for a Writ of Mandamus to compel petitioner Mayor to reinstate them with back salaries and damages. Respondents, therefore, actually intended to sue petitioner in his official capacity. Failure to implead the Municipality and other municipal authorities should not deter this Court, in the interests of justice and equity, from including them herein as respondents. As held by this Court, speaking through Mr. Justice Juvenal K. Guerrero, in *Balquidra vs. CFI, et als.*, 80 SCRA 123 [1977]:

"x x x The non-inclusion of the Provincial Board or the Provincial Auditor in the present case is of no importance. Such non-inclusion is no basis to declare that the Province was not heard, nor had no opportunity to defend itself. That the Provincial Government can act only through its officials, either thru its Provincial Executive alone, or thru the Provincial Board or thru other officials exercising discretion, cannot be disputed. The record of the case shows that the complaint was directed against the respondent officials not in their personal but official capacities, the illegal act complained of being done in the course of official function. Furthermore, the respondents were represented by the Provincial Attorney. x x x These facts alone belie the contention that the Province of Capiz was not afforded its day in court. x x x"

Similarly, in *Gonzales vs. Osmeña, Jr., et als.*, 3 SCRA 841 [1961] this Court held:

"x x x Where the City Mayor, the Auditor, Treasurer and even the Municipal Board were made parties to a case represented by the City Attorney who had exerted efforts in protecting their interest as well as that of the City, 'the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents were considered a mere formality and deemed effected, as if a formal amendment of the pleadings

had been made.' "

In this case, petitioner, too, was represented by a lawyer from the Office of the Municipal Attorney, Tagum, Davao.

We also find that petitioner was in bad faith in terminating respondents. Petitioner alleged that the positions of respondents were scrapped in the Budget and Plantilla of Personnel for Fiscal Year 1972-1973. However, a comparison of the Budget and Plantilla of Personnel for Fiscal Year 1972-1973 and that of 1971-1972 shows that the positions in the latter were essentially the same as in the former. As previously pointed out, the number of employees even increased in the 1972-73 plantilla. In actuality, therefore, the alleged "reduction in force" was a farce. Petitioner must be held answerable for his acts. In the words of Mr. Justice Querube Makalintal:

"x x x There are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts." [10]

We, therefore, affirm respondent Court's finding that respondents are entitled to reinstatement with back salaries. However, following the formula adopted by this Court in *Balquidra vs. CFI*, supra, respondents are entitled to back salaries at the rates last received by them for a period of five (5) years, without qualification and deduction. Petitioner, too, should be held solidarily liable with the Municipality of Tagum, Davao del Norte, herein deemed as formally impleaded, for the payment of back salaries, attorney's fees and costs.

"Well-settled is the rule that when a public officer goes outside the scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office, but is liable for his acts like any private individual.

'It is a general rule that an officer-executive, administrative, quasi-judicial, ministerial, or otherwise who acts outside the scope of his jurisdiction and without authorization of law may thereby render himself amenable to personal liability in a civil suit. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office, and not personally. In the eye of the law, his acts then, are wholly without authority.' 43 Am. Jur. 89-90; *Festejo v. Fernando*, 94 Phil. 507.' "[11]

WHEREFORE, modifying the Decision under review, petitioner Mayor Gelacio P. Gementiza, or the incumbent Mayor of Tagum del Norte, is ordered to reinstate respondents to their positions. Petitioner Mayor Gementiza and the Municipality of Tagum del Norte, are hereby held jointly and severally liable to pay respondents back salaries from their respective dates of dismissal but only up to and for a period of five (5) years, without qualification and deduction; attorney's fees of P500.00 each; and costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Fernandez, Guerrero, and Plana, JJ., concur.

[1] Former 4th Division, composed of Justices Luis B. Reyes, Roseller T. Lim (ponente) and Francisco Tantuico, Jr.

[2] Exhibits "X" to "X-31".

[3] Decision, pp. 66-81, Supreme Court Rollo.

[4] Decision, p. 35, Rollo of Supreme Court.

- [5] Exhibits "X-6" and "X-13".
- [6] Exhibit "Z", Record of Exhibits.
- [7] Exhibit 100, *ibid*.
- [8] Exhibits "B" and "A".
- [9] *Unabia vs. Hon. City Mayor, et al.* 53, O.G. 133 (1956).
- [10] *Nemenzo vs. Sabillano*, 25 SCRA 1, 7 (1968).
- [11] *Enciso vs. Remo*, 29 SCRA 580 (1969).

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