

AURELIO TIRO, AS CITY SUPERINTENDENT OF SCHOOLS OF CEBU CITY, PETITIONER-APPELLANT, VS. HONORABLE AGAPITO HONTANOSAS, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH XI, ZA...

G.R. No. L-32312. November 25, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Civil Case No. 11616 of the defunct Court of First Instance of Cebu, Zafra Financing Enterprise sued Aurelio Tiro in his official capacity as Superintendent of Schools in Cebu City. It appears that Zafra had extended loans to public school teachers in Cebu City and the teachers concerned executed promissory notes and special powers of attorney in favor of Zafra to take and collect their salary checks from the Division Office in Cebu City of the Bureau of Public Schools. However, Tiro forbade the collection of the checks on the basis of Circular No. 21, series 1969, dated December 5, 1969, of the Director of Public Schools which reads as follows:

**"PROHIBITING PAYMENT OF SALARY TO
PERSONS OTHER THAN THE EMPLOYEE
CONCERNED**

To Superintendents:

1. Quoted hereunder is Memorandum Order No. 93 dated February 5, 1968, of the Executive Office entitled, 'Prohibiting Payment of Salary to Any Person Other Than the Employees Concerned, Except As Provided Herein.'

It has been observed that some employees delegate the collection of their salaries to attorneys-in-fact on the strength of powers of attorney or other forms of authority in favor of other persons, evidently in satisfaction of obligations contracted by them. This practice should be discouraged in view of its adverse effects on the efficiency and morale of employees whose incentive to work is necessarily impaired, since their salary or a portion thereof goes to other persons.

To curb this unwholesome practice, it is hereby directed that henceforth no cashier or disbursing officer shall pay to attorneys-in-fact or other persons who may be authorized under a power of attorney or other forms of authority to collect the salary of an employee, except when the persons so designated and authorized is an immediate member of the family of the employee concerned, and in all other cases, except upon proper authorization of the Assistant Executive Secretary for Legal and Administrative Matters, with the recommendation of the Financial Assistant.

All orders or regulations inconsistent herewith are hereby revoked.

This order shall take effect immediately.

2. Accordingly, it is desired that, henceforth, cashiers or disbursing officers pay the salary due any school employee or issue the treasury warrant of any teacher direct to such employee or teacher, except when authority to collect the salary or treasury warrant has been given to another person, and the person so authorized is an immediate member of the family of the employee or teacher concerned.

3. Any previous regulation issued by this Office inconsistent with this Circular is hereby revoked."

Zafra sought to compel Tiro to honor the special powers of attorney; to declare Circular No. 21 to be illegal; and to make Tiro pay attorney's fees and damages. The trial court granted the prayer of Zafra but the claim for money was disallowed on the ground that he acted in good faith in implementing Circular No. 21.

Tiro now seeks in this petition for review a reversal of the trial court's decision.

The petition is highly impressed with merit.

The core issue is whether or not Circular No. 21 is valid and enforceable and the answer is definitely in the affirmative.

The salary check of a government officer or employee such as a teacher does not belong to him before it is physically delivered to him. Until that time the check belongs to the Government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the Government. On this basis Circular No. 21 stands on firm legal footing.

The Circular in question is authorized by relevant statutes extant when it was issued such as the following:

"SEC. 79 (b). Power to regulate - The Department Head shall have power to promulgate, whoever he may see fit to do so, all rules, regulations, orders, circular, memorandums, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; but none of said rules or orders shall prescribe penalties. All rules, regulations, orders or instructions of a general and permanent character promulgated in conformity with this section shall be numbered by each Department consecutively each year, and shall be duly published.

Chiefs of Bureaus or offices may, however, be authorized to promulgate circulars of information or instructions for the government of the officers and employees in the interior administration of the business of each Bureau or office, and in such case said circulars shall not be required to be published." (Revised Administration Code.)

"SEC. 21. Deductions Prohibited. - No person shall make any deduction whatsoever from the salaries of teachers except under specific authority of law authorizing such deductions: Provided, however, that upon written authority executed by the teacher concerned, (1) lawful dues and fees owing to the Philippine Public School Teachers Association, and (2) premiums properly due on insurance policies, shall be deductible." (Magna Carta For Teachers, R.A. No. 4670.)

Zafra's claim that the Circular impairs the obligation of contracts with the teachers is baseless. For the Circular does not prevent Zafra from collecting the loans. The Circular merely makes the Government a non-participant in their collection which is within its competence to do.

WHEREFORE, the petition is granted; the judgment of the court a quo is hereby set aside; costs against the private respondent.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.
De Castro, J., no part.

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