

DR. ANGELA V. GINSON, PETITIONER, VS. MUNICIPALITY OF MURCIA AND MUNICIPAL MAYOR OF MURCIA AND HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-46585. February 08, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Before us is the recurring issue of dismissal of a government employee and challenges presented against its validity.

The facts, as found by the trial court,[1] are as follows:

On February 16, 1968, or 44 days after defendant Mayor Baldomero de la Rama assumed office as the Municipal Mayor of Murcia, Negros Occidental, he wrote a letter to plaintiff terminating her services as Municipal Dentist of Murcia, Negros Occidental effective February 18, 1968. (Exh. "B"). Said letter was received by the plaintiff on February 16, 1968. Said letter reads as follows:

"Please be informed that effective February 16, 1968, your service is hereby terminated, due to lack of funds."

(SGD.) BALDOMERO DE LA RAMA
Municipal Mayor

Plaintiff, prior and up to the time she was dismissed, had been continuous-ly, faithfully and efficiently performing her duties as Municipal Dentist of the Municipality of Murcia since August 1, 1964, and was receiving a salary of P200.00 per month. On the very day she was discharged, plaintiff immediately went to the defendant Municipal Mayor Baldomero de la Rama and pleaded that she be reinstated to the service on the ground that her tenure of office is covered by Civil Service law and that she cannot be removed or suspended except for cause, but defendant de la Rama blatantly refused to reinstate her. Instead she was told and chal-lenged to go to Court and to file a case against him and the Municipality.[2]

The trial court held for the petitioner and directed the private respondents to reinstate her in office and to pay back salaries and attorney's fees. On appeal, the respondent Court[3] found that the respondent municipality's financial condition arising from an alleged overdraft incurred during the year, warranted the dismissal, held the same to be justified, and rendered a reversal.

The issue that confronts us, then, is one of fact: Whether or not the respondent municipality's state of finances justifies the challenged dismissal.

The general rule is that the findings of fact of the Court of Appeals are controlling on this Court.[4] The rule is, however, subject to recognized exceptions, viz: (1) when the findings of the Court of Appeals are grounded entirely on speculation, surmise, and conjecture; (2) the inference made is manifestly mistaken; (3) the Court of Appeals committed a grave abuse of discretion; (4) its judgment is based on a misapprehension of facts; (5) it went beyond the issues of the case and its findings contravene the admissions of the parties; (6) its findings of fact

are contrary to those of the trial court; (7) the same are conclusions without citations of specific evidence; (8) the facts set forth in the appellant's brief are not disputed by the appellee; and (9) when the findings of fact of the Court of Appeals are not supported by the evidence or contradicted by the evidence on record.[5]

We find serious contradictions characterizing the findings of the lower and the respondent courts, a development that compels us to resort to the records ourselves. In the process, we are constrained to reject the respondent Court's findings. Accordingly, we sustain the trial court, and hold for the petitioner.

The Court is convinced that the respondent municipality was financially capable of continued support to the petitioner in office. There is evidence, to begin with, that at the time the petitioner was discharged, the Murcia treasury had existing funds to cover her salary for the month of February, 1968, and for the succeeding months as well, until June, 1968.[6] As of February, 1968 therefore, the Municipality of Murcia had no justifiable reason to plead insolvency. At that time, it had no excuse to effect the questioned dismissal.

There is likewise evidence that for the fiscal year 1968-1969, the respondent municipality approved an annual budget of P270,000.00, more than double its budget of P154,910.00 for the fiscal year 1967-1968, or an increase of P115,090.00. We agree with the lower court that if the respondent municipality were truly in dire financial straits, "the natural tendency is that there will be a decrease in the appropriations for the ensuing fiscal year." [7]

As found furthermore by the trial court, the respondent municipality had, in the same period, approved salary increases to some thirty-one employees.[8] This, again, negates its claims of bankruptcy.

There is evidence, finally, that the Municipality of Murcia had extended new items and appointments to a total of six employees at the time the petitioner was removed from the office.[9]

These actuations, in our opinion, are inconsistent with pretexts of insolvency.

In the premises, we reject the municipality's reliance on its alleged overdraft of P50,000.00 that allegedly led to the dismissal now assailed. We likewise dismiss its contention that "the petitioner was not removed from her position but that the termination of her services was the inevitable consequence of the abolition of her item as municipal dentist." [10]

The existence of the alleged P50,000.00-deficit was never sufficiently proven. Moreover, if this were the case, it raises disturbing inquiries. For instance, why the salary and budget increases, and the new appointments?

It is true that abolition of office neither means removal nor separation from office and is not covered by the protection of the security of tenure clause of the Constitution.[11] This principle, however, carries with it a caveat: That the abolition is done in good faith.[12] Good faith, regrettably, is wanting in this case. The respondents' measures subsequent to the petitioner's dismissal are, rather, indicative of bad faith.

In *Cruz vs. Primicias, Jr.*, we held:

The claim of economy effectuated through the reorganization is belied by the fact that while 72 positions were abolished, 50 of these were actually vacant. Only 22 stations were occupied at the time of the reorganization, carrying total emoluments of P25,538.71 per semester, of which P6,120.00 per semester corresponds to the five remain-ing petitioners (Answer, Exh. 3-C). As against these 22 positions suppressed by the reorganization (Executive Order No. 2), 28 new positions were simulta-neously created, with a compensation of P87,600.00 per annum, P43,800.00 per semester, for confidential personnel in the office of the Governor (Exh. Order No. 2, par. d). In addition, a Provincial Attorney and his staff (p. 2), and a Personnel Division of five members, importing P13,380.00 per semester were set up. Thus, against the suppressed items of P25,538.71, new items carrying a total appropriation of P57,180.00 per semester (or P114,360.00 annually) were created, in addition to P8,000.00 for casual laborers at the discretion of the Governor. Where the economy was the same excuse

advanced by the pre-ceding administration when it attempted to eliminate civil service eligibles upon its coming into power (Ocampo, et al. vs. Duque, supra).[13]

a holding we reiterate herein.

The findings of the respondent Court are moreover in contravention with its own findings in the case of the four policemen the respondents had dismissed on the same occasion.[14] In that case, the respondent Court itself dismissed the municipality's pleas of bankruptcy. To say otherwise with respect to this case is indeed, to take inconsistent positions. While the Court of Appeals, sitting as a division, is not bound to take judicial notice of decisions of another division, the decision (in G.R. No. 50058-R) was duly brought to the attention of the respondent Court (eighth division), and there was no reason for its obduracy.

In sum, we declare the pretended abolition of the dentist's clinic of the Municipality of Murcia to be in fact a flimsy excuse to justify the dismissal of the petitioner, contrary to security of tenure protection of the Constitution, and is hence, null and void. Considering, however, the lapse of time -- spanning almost twenty years -- since this controversy rose, and considering the probability that the petitioner might have, in the interim, acquired a new employment, we are constrained to grant her the payment of back salaries equivalent to five (5) years without deduction or qualification.[15]

We likewise order her reinstatement, subject to the condition that she has not obtained any other employment, as Murcia municipal dentist or any position for which she is qualified by reason of civil service eligibility, and subject to the requisites of age and physical fitness.[16] We affirm finally, the award of attorney's fees by the lower court in the sum of P1,000.00. The private respondents' liability are declared to be joint and solidary.

WHEREFORE, the Petition is GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one is hereby entered, ordering the private respondents, the Municipality of Murcia, Negros Occidental, and the Municipal Mayor of Murcia, to:

- REINSTATE the petitioner as municipal dentist of the Municipality of Murcia, Negros Occidental, or to any position for which she is qualified pursuant to the Civil Service Law and other rules;
- PAY unto her back pay equivalent to five (5) years based on her latest salary scale.

Costs against the private respondents.

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Kintanar, Cesar, Presiding Judge, Court of First Instance of Negros Occidental, Twelfth Judicial District.

[2] Rollo, 48.

[3] Climaco, Rafael, J, Pascual, Crisolito and De Castro, Pacifico, JJ., Concurring.

[4] Under Rule 45 of the Rules of Court, only questions of law may be raised in the Supreme Court. (RULES OF COURT, Rule 45, sec. 1.)

[5] Teodoro v. Court of Appeals, G.R. No. 31471, November 12, 1987, and cases cited therein.

[6] Rollo, id., 49.

[7] Id.

[8] Id., 49-50.

[9] Id., 50.

[10] Brief for the Respondents, 7.

[11] De La Llana vs. Alba, No. L-57883, March 12, 1982, 112 SCRA 294 (1982); Cruz v. Primicias, Jr., No. L-28573, June 13, 1968, 23 SCRA 998 (1968);

[13] Supra, at 1004, emphasis in original; see also Gementiza v. Court of Appeals, Nos. L-41717-33, April 12, 1982, 113 SCRA 477 (1982).

[14] Amisola v. Municipality of Murcia, (CA) G.R. No. 50058-R, May 21, 1974.

[15] Laganapan v. Asedillo, G.R. No. 28353, September 30, 1987; Gementiza v. Court of Appeals, supra; Cristobal v. Melchor, No. L-43206, July 29, 1977, 78 SCRA 175 (1977);

[16] Cristobal v. Melchor, supra.

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