

CARMEN E. CASTILLO, PETITIONER AND APPELLANT, VS. JUAN C. PAJO, PROVINCIAL GOVERNOR, TIMOTEO BUTALID AND MAXIMO CASTRODES, PROVINCIAL BOARD MEMBERS OF BOHOL, RESPONDENTS AND APP...

G. R. No. L-11262. April 28, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

In November 1951, Carmen R. Castillo was appointed correspondence clerk in the office of the Provincial Fiscal of Bohol by the Governor of that province. She rendered service, as such until June 12, 1954, when she stopped working by reason of the Provincial Board's Resolutions Nos. 161 and 300 abolishing her position effective June 9, 1954.

She protested to the corresponding authorities; and having obtained no relief, she instituted the instant proceeding to compel reinstatement, payment of back salaries, damages and attorney's fees. Her action rested on the propositions that her separation was unlawful in view of her civil service eligibility and status, and that the Secretary of Finance had disapproved the resolutions. She also relied on the Constitutional provision that "No officer or employee in the civil service shall be removed or suspended except for cause as provided by law."

The respondents defended the legality of their actuation, argued that the constitutional inhibition did not refer to abolition of government positions and that the Secretary of Finance merely "suggested" the petitioner's retention in the provincial payroll.

A hearing was had, and memoranda were submitted by both sides. Thereafter, the Honorable Hipolito Alo, Judge, citing pertinent decisions of this Court reached the conclusion that the Board had legal power to abolish the position with the resultant consequences and dismissed the action.

Castillo took the matter to the Court of Appeals; but such Court, finding her assignments of error to involve purely questions of law, certified the record to this Supreme Court in accordance with the Judiciary Act of 1948.

Essentially, two issues arise from the above state of affairs: (a) whether the Board did validly abolish the petitioner's position, and (b) whether such abolition, if valid, produced her lawful separation from the provincial service.

It is not disputed that the position of clerk in the Fiscal's Office occupied by petitioner was created by the Provincial Board in virtue of its power expressly given by Section 2081 of the Revised Administrative Code to "fix the number of assistants, deputies, clerks and other employees for the various branches of the provincial government" and to fix their salaries. There is no statute expressly empowering the Board to abolish the offices or positions it has created; however, it is a well-established principle in the law of public administration that the power to establish an office includes the authority to abolish it—unless there are constitutional or statutory rules expressly or impliedly providing otherwise.[1] And the abolition of the office terminates the right of the

incumbent to exercise the rights and duties thereof.[2]

Petitioner contends that the resolution did not become effective because it was disapproved by the Department of Finance in its indorsement of December 28, 1954 in connection with the Board's Resolution No. 161.

"The position of correspondence clerk in the office of the Provincial Fiscal which is proposed to be abolished on the ground that the position is unnecessary as stated in the budget analysis of the Provincial Treasurer should be continued, it appearing that the position involved is not actually vacant and that the incumbent thereof is a civil service eligible. * * *."

But we have held in *Rodriguez vs. Montemayor*[3] October 1954, that under the statutes and rules then prevailing the Secretary of Finance had no power to disapprove resolutions of provincial boards abolishing positions in the provincial service created by them. In the light of said decision, the indorsement above quoted must be considered as a mere suggestion for the retention in the local plantilla of petitioner's item—a recommendation which said Board chose not to follow for reasons of its own.

Of course, the legal situation changed with the passage of Republic Act No. 1063 on June 12, 1954, directing that abolitions of positions (in the provincial service) shall not take effect except upon approval by the Secretary of Finance. Congress thereby amplified the powers of said Department Head, and/or enunciated a new legislative policy. However, technically and logically said Act could not and did not apply to the herein Resolutions of respondent Board passed and effective before its enactment.

Petitioner's ouster was due to personal reasons, says her counsel "she being suspected by the Provincial Governor as the leader of the 37 other low-salaried government employees who sent a petition to the President of the Philippines asking that their salaries be increased in accordance with the scale set forth in the Minimum Wage Law of Bohol."

The Governor is not the Board. And the act of initiating such a reasonable petition for increase of salaries could not have caused any resentment on the part of provincial government officials.

From all the foregoing circumstances, it follows that the elimination of petitioner's position was valid and effective on June 9, 1954, and that thereafter, she had no position to occupy, no salary to receive. She was out of the service—as no law protected her tenure. The ouster was due to the needs of public service says the Board. There was no such need, claims appellant, it was done in bad faith. Such issue obviously involves the advisability or the necessity of the measures, which is not within the province of the courts to decide.

In this connection, it is true we once mentioned in *Brillo vs. Enage*, supra, "good faith" as a test to be applied whenever the abolition of an office becomes the subject of judicial investigation. But that litigation referred to the elimination of positions in the judiciary; and the constitutional protection of the judges' tenure[4] came into play. The general observations quoted therein should be circumscribed to the particular situation which elicited them.

There is, of course, the fundamental protection afforded to civil service employees against removal "except for cause as provided by law"; but it does not govern in this case, because there has been no removal of petitioner but an abolition of her position, which was within the power of the provincial board, in the same way that Congress has the power to abolish offices created by it or by its authority.

In *Manalang vs. Quitoriano* [5] Luis Manalang was prior to June 20, 1952, Director of the Placement Bureau. On that date, Republic Act No. 761 abolished the Bureau and his office. When he sued to retain his office or to assume the equivalent post of Commissioner of the National Employment Service which succeeded to the Placement Bureau, he invoked the constitutional mandate that "no officer * * * in the Civil Service shall be removed * * * except for cause as provided by law." This Court had to deny him relief, seeing no violation of said

mandate, since "there has been neither a removal nor a suspension of petitioner Manalang but an abolition of his former office of Director of the Placement Bureau, which admittedly is within the power of Congress to undertake by legislation."

In *Rodriguez vs. Montemayor*, 50 Off. Gaz., 4820, this Court perceived no legal objection to Resolution No. 55 of the Provincial Board of Pangasinan abolishing three positions of special counsel in the office of the provincial fiscal⁶ despite the consequent ouster of the three incumbents. Arid in *Dominguez vs. Pascual*, 101 Phil., 31, the authority of the provincial board to suppress positions in the provincial roster occupied by civil service eligibles, was again recognized.

Wherefore, the judgment of the court below dismissing the action should be and is hereby affirmed, without pronouncement as to costs. So ordered.

Paras, C. J., Montemayor, Reyes, A., Bautista, Angelo, Labrador, Concepcion, and Reyes, J. B. L., J.J., concur.

[1]*Rodriguez vs. Montemayor*, 94 Phil., 964; 50 Off. Gaz., [10], 4820; 67 Corpus Juris Secundum 121.

[2]67 Corpus Juris Secundum 121; *Brillo vs. Enage* 94 Phil 732; 50 Off. Gaz., [7] p. 3102.

[3]50 Off. Gaz., 4820.

[4]Art. VIII, sec. 9, Constitution.

[5]94 Phil., 903; 50 Off. Gaz., 2515.

[6]Positions created by its previously.

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