

DIOGENES O. RUBIO, ERROL SAM-BRANO, JESUS RACASA, VICENTE SEPE, ARMANDO PELAYO, JOSE GERONIMO, ALMARIO SAGUM, JOSE PINEDA, ARTURO PAREDES, ROBERTO SAMPANG, CARLOS MANSAL, RAFAEL...

G.R. No. L-31469. May 22, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In a special civil action of mandamus instituted by petitioners-appellees against respondents-appellants[1] in the Court of First Instance at Quezon City,[2] the parties submitted a stipulation of facts which closed with the prayer "that on the basis of ** (said) stipulation of facts, judgment be rendered on the merits based on what said facts may be able to justify and sustain as legal and warranted in the premises." Judgment was thereafter rendered[3] disposing as follows:

"WHEREFORE, the respondents are hereby ordered to reinstate the petitioners to their former positions, and to pay their back salaries from July 1, 1966, up to the time that they are reinstated including whatever allowances the petitioners were enjoying from the time of their separation from the service; and to pay the costs of the proceedings."

The respondents appealed to the Court of Appeals.[4] There, briefs were submitted in due course by the parties.[5] The Court of Appeals however declined to resolve the appeal on the merits. Observing that the parties had stipulated on all the facts, and the Trial Court, on the basis thereof, had resolved "the only issue ** (of) whether or not Resolution No. 686 of the PHHC dated March 10, 1966, for the Fiscal Year 1965-66, covers the case of the petitioners," the Court of Appeals "endorsed the case" to this Court since "the question involved is one of law because there is a doubt or difference arising between petitioners and the Lower Court, on the one hand, and respondents, on the other, as to whether or not in the light of the stipulated facts and the applicable law petitioners fall under the contemplation of the resolutions complained of," which question of law is within the exclusive jurisdiction of the Supreme Court.[6] The case was accepted by this Court.[7]

The parties' aforesaid stipulation of facts reads as follows:[8]

"1. Republic Act No. 3469, authorized the construction of Multi-Storey Tenement Buildings and to finance the projects, Congress has appropriated P15,000,000.00 from the general funds in the National Treasury, not otherwise appropriated and from the proceeds of reparations from Japan.

"2. The Multi-Storey Tenement Projects thus established are operated and maintained from rentals collected from tenants which constitute a revolving fund of the project, kept under separate and independent account from other PHHC projects.

"3. The Multi-Storey Tenement Projects are projects of the national government, subject only to maintenance, repair, improvement, expansion and administration by the respondent PHHC upon their completion.

"4. Petitioners were issued original and permanent appointments by the PHHC in the Multi-Storey Tenement Projects, occupying regular and permanent positions provided for in the plantilla of personnel of said project starting from the Fiscal Year 1964-65, continuing to hold and occupy the same until their separation from the service on July 1, 1966, at a total annual salary budget of P61,656.00;

"5. The respondent PHHC also maintains and operates three independent projects, like the Bagong Barangay Housing Project (Proj. 5) in Pandacan, Manila; Veterans Village (Proj. 7) in Bago Bantay, and Quirino District (Proj. 3) both in Quezon City;

"6. The PHHC, in its capacity as Administrator of the Multi-Storey Tenement Projects, passed and approved the plantilla and Budget for the said projects based on estimated income and revenues, derived from rentals fixed by the Statutory Special Committee created under RA 3469, treating the same separate and independent from the PHHC Budget and other PHHC operations.

"7. Resolution No. 686, FY-1965-66, dated March 10, 1966 (copy attached as Annex 'A') from which the separation from the service of petitioners were based, refers only to abolition of positions and termination of services effective April 30, 1966, extended to June 30, 1966, under Res. No. 799, FY-1965-66, (copy attached as Annex 'B') of all PHHC employees, including those in the independent PHHC projects, who were granted original appointment from January 1, 1965, up to the date of said resolution.

"8. That said PHHC Resolutions No. 686 (Annex 'A') and No. 799 (Annex 'B') were duly approved by the Office of the Economic Coordination in its 1st Indorsement dated May 3, 1966 (copy attached as Annex 'C');

"9. That under PHHC Memorandum-Circular No. 66-32 dated May 27, 1966 (copy attached as Annex 'D') and PHHC Resolution No. 1027 dated June 30, 1966 (copy attached as Annex 'E'), the said Res. 686 as amended by Res. 799, was implemented also in the Multi-Storey Tenement Housing Projects;

"10. That pursuant to Res. No. 133, FY 1966-67, dated August 2, 1966 (copy attached as Annex 'F') which authorized the hiring of 36 casuals, respondents actually hired 31 casual employees with daily wages ranging from P7.00 to P8.00 per day who have been working from then on up to the present.

"11. That for the Fiscal Year 1966-67, respondents have incorporated in the budget of the Multi-Storey Tenement Projects a lump sum appropriation of P51,500.00 for wages of casuals under Res. No. 556, dated November 8, 1966."

It must be added, in relation to paragraph 8 of the stipulation of facts, that the approval by the Office of the Economic Coordination of said PHHC Resolutions No. 686 No. 799, was made subject to the explicit condition "that the abolished positions should not be re-created thereafter." [9]

In the Trial Court's view, the only question presented was "whether or not Resolution No. 686 of the PHHC dated March 10, 1966 for the Fiscal Year 1965--66, covers the case of the petitioners herein." That issue it answered in the negative. While Resolution No. 686 was passed avowedly "to abolish the positions and terminate the services of all PHHC employees including those in the independent PHHC projects as of April 30, 1966, for the reason that * * the PHHC has a very low cash position and * * could no longer afford to pay the salaries of its officials and employees," the Court declared that "the Multi-Storey Tenement Project is not one of the independent projects of the PHHC." According to the Court, it was "a project of the National Government and the employees of the same were paid out of the funds derived from the rentals of the said property;" hence, the petitioners "can be considered as not actually employees of the PHHC but employees of the Multi-Storey Tenement Housing Project erected under the national funds, (falling) however, for administration purposes ** under the PHHC."

Said Resolution No. 686 was branded by the Trial Court as a mere pretext, politically motivated, to replace the old employees with people of the choice of the new directors and officers of the PHHC; Rubio and his thirty-one (31)

co-employees, petitioners herein, "were dismissed from the service without cause, (t)he respondents ** pretending lack of funds ** merely as a means to employ ** new employees which took the place of the herein petitioners." That pretense, the Trial Court held, was exposed by certain subsequent developments, i.e., the hiring of replacements for all but one of the thirty-two petitioners barely a month after the latter's separation from the service; the continued retention in employment of these casuals up to the time of the trial although they were ostensibly hired only for three (3) months; and the inclusion in the following year's budget of "an appropriation of P51,500.00 for the salaries of the casuals of the Multi-Storey Tenement Housing Project" (which latter circumstance, the Trial Court further points out, also belies the asserted reason of the PHHC for the discharge of the employees, i.e., that it was low on funds).

Chiefly on these premises, the Trial Court rendered judgment for the petitioners as above mentioned.

The PHHC and its co-respondents insist, on the other hand, that Resolution No. 686 dated March 10, 1966 applies to all PHHC employees, including those in the so-called Multi-Storey tenement projects. They maintain that since, by specific provision of law, the PHHC had been designated administrator of said projects, "it necessarily follows that the PHHC, by implication, is vested with the authority and power to determine which offices and positions are necessary to be created and to be abolished." In support of their theory, they invoke this Court's ruling in *Ulep et al. v. Carbonell, et al.*, G.R. No. L-17807, January 31, 1962,[10] to the effect that the "power to create an office includes the power to abolish it, unless there are constitutional or statutory rules expressly or impliedly providing otherwise."

The respondents in their brief also draw attention to the particular powers granted by law to the PHHC and to its General Manager, and underscore[11] the fact that the latter may -

" ** appoint and fix the number and salaries, with the approval of the Board of directors, of such subordinate personnel as may be necessary for the proper discharge of the duties and functions of the Corporation, and, with the approval of the Board, ** remove, suspend, or otherwise discipline, for cause, any subordinate employee of the Corporation (italics supplied)."

Their arguments are unpersuasive and unavailing.

This Court agrees with the Trial Court that the facts on record do establish that the resolution in question was a mere pretext to replace the petitioners-employees, that there was in fact no abolition of positions either contemplated or actually effected, and the employees engaged subsequent to the termination of the petitioners' services were not in truth "casual" but more or less permanent, provision for their salaries having in fact been made in the budget for the following year. What happened simply is that the petitioners-employees were dismissed without cause, contrary to the very provision of law just adverted to (in the next preceding paragraph hereof), that the PHHC General Manager has power "to remove ** for cause any subordinate employee of the Corporation."

The Court therefore also declares that the Trial Court was correct in directing reinstatement of the petitioners-employees to their former positions, and the payment to them of back salaries and other benefits they would otherwise have earned.

This is however no longer an easy matter. In the first place, it is doubtful if reinstatement as a remedy would be feasible in view of the fact that more than twenty-three (23) years have already elapsed since the petitioners-employees' positions were abolished.[12] Many of them will have found employment elsewhere. Some may have passed away. Many others will have reached retirement age or will no longer be employable on account of age or inadequacy of qualifications, by this time. In the second place, as the PHHC and the other respondents allege,[13] it would be unfair to "permit a dismissed laborer to earn back wages for all time, or for a very long

period of time," without allowing the employer to prove the salaries the laborer had earned during the period of his separation, or what efforts he had exerted to find gainful employment; and they suggest that the award of back salaries should be limited to three months.[14] Providentially, fairly adequate alternative relief may be granted to the petitioners under a statute enacted, and precedents promulgated, subsequent to the respondents' resolution abolishing their respective positions.

Batas Pambansa Bilang 337, otherwise known as the Local Government Code, was passed by the legislature and became effective on February 10, 1983. Section 76 thereof (under Title Four: Personnel Administration) provides as follows:

SEC 76. Abolition of Position. -- When the position of an official or employee under the civil service is abolished by law or ordinance the official or employee so affected shall be reinstated in another vacant position without diminution of salary. Should such position not be available, the official or employee affected shall be granted a separation pay equivalent to one month salary for every year of service over and above the monetary privileges granted to officials and employees under existing law.

To be sure, the provision on its face is apparently intended for the benefit only of officers and employees in the local political subdivisions. The Court however sees no reason why it should not be applied as well to other personnel of the government, including those in the People's Homesite and Housing Corporation, which was then considered part of the Civil Service. A contrary conclusion would make the provision questionable under the equal protection clause of the Constitution as there appears to be no substantial distinction between civil servants in the local government and those in other branches of government to justify their disparate treatment. Since the petitioners are "employees under the civil service,"[15] the matter of their reinstatement to their former positions at this time should logically and justly be governed by the above cited statute although enacted many years after the abolition of their positions. And since, too, it may reasonably be assumed that reinstatement to their former positions is no longer possible, or feasible, or even desired or desirable, the petitioners or their heirs must be deemed entitled to receive the separation pay provided by said BP Blg. 337.

As regards back salaries, in at least four (4) cases,[16] this Court has authorized payment thereof to government employees unlawfully separated from their employment corresponding to a period of five (5) years without qualification and deduction, in addition to their reinstatement.[17] There is no reason for this Court now to make a different disposition as regards the petitioners.

WHEREFORE, the respondents' appeal is pronounced to be without merit, and they are sentenced to pay to the petitioners-appellees, in accordance with Section 76 of Batas Pambansa Bilang 337, separation pay "equivalent one month salary for every year of service over and above the monetary privileges granted to officials and employees under existing law," as well as back salaries at the rates at present prescribed for the positions equivalent to those previously occupied by them, corresponding to a period of five (5) years without qualification or deduction.

IT IS SO ORDERED.

Cruz and Medialdea, JJ., concur.

Gancayco and Griño-Aquino, JJ., on leave.

[1] Civil Case No. Q-10391

[2] Branch IV, presided over by Hon. Walfrido de los Angeles

[3] January 30, 1967

[4] Docketed as CA-G.R. No. 40048-R

[5] Respondents-appellants' brief was submitted by the Government Corporate Counsel on August 22, 1968 (rollo, p. 39); that of petitioners-appellees, on September 20, 1968 (rollo, p. 40)

[6] Rollo, pp. 50-55. The resolution dated November 4, 1969 was written for the Seventh Division by Soriano, J., with whom concurred Concepcion, Jr., J. (later Associate Justice of this Court), and Reyes, J.

[7] Resolution, January 6, 1970. N.B. The certification of the case to the Supreme Court was at the time authorized by Sec. 3, Rule 50, of the Rules of Court, and Sec. 31 of the Judiciary Act of 1948. However, it would appear that in view of the repeal of certain of the provisions of Rules 41 and 42 of the Rules of Court by RA Nos. 5433 and 5440 (both eff. Sept. 9, 1968) and 6031 (eff. Aug. 4, 1969) as well as BP Blg 129 (eff. Aug. 14, 1981), transfers of cases erroneously appealed to the Court of Appeals from that Court to the Supreme Court are no longer permitted.

[8] Rollo, p. 39: Brief for Respondents-Appellants, pp. 6-9; See also, Resolution of Court of Appeals, Rollo, pp. 50, 51-53

[9] Annex C, Stipulation of Facts; see preceding footnote

[10] 4 SCRA 375, 384

[11] At page 12

[12] After the Court was reorganized in April, 1986, the case was placed in the agenda of the First Division, for the first time, on August 10, 1988, at which time the parties were required, within 10 days from notice, to "MANIFEST whether or not they are still interested in prosecuting this Government Corporate Counsel manifested, on March 3, 1989, "that respondent-appellant PHHC (now NHA) is still interested in prosecuting this case, etc."

[13] At pp. 18-19 of their brief

[14] Citing "Sta. Cecilia Sawmills, Inc. vs. CIR, et al., G.R. No. L-19273 and L-19274, Supreme Court"

[15] SEE National Housing Corporation v. Juco, 134 SCRA 172 (1985), citing the 1935 and 1973 Constitutions, and P.D. No. 807

[16] Balquidra v. CFI of Capiz, 80 SCRA 123 (1977), citing Cristobal v. Melchor, 101 Phil. 857 (1977); Salcedo v. C.A., 81 SCRA 408 (1978); Gementiza v. C.A., 113 SCRA 477 (1982); Laganapan v. Asedillo, 154 SCRA 377 (1987); cf., Antiporda v. Ticao, 160 SCRA 40 (1968), and Laganapan v. Asedillo, 154 SCRA 377 where, reinstatement no longer being feasible, payment to a dismissed civil service employee of "back wages equivalent to five (5) years pay without qualification or deduction, was declared adequate remedy in the premises.

[17] Cf, Samson v. C.A., 145 SCRA 654 (1986) where award of back salaries was for a period of three (3) years only

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