

**BACOLOD CITY, PETITIONER VS. HON. EDUARDO ENRIQUEZ. ETC.,
JOSE ASCONA, ETC., CRISPIN CARMONA, ARTURO F. CARDENAS,
CONRADO MATAVIA, MONICO NOBLEZA, PACIFICO LIMBAGA,
NORBERTO ARR...**

G.R. No. L-8801. September 30, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

The record of this case and those of its related cases, G.R. Nos. L-8790 to L-3797, disclose that in the year 1951 the herein respondents Crispin Carmona, Pacifico Limbaga, Conrado Matavia, Monico Nobleza, Ernesto S. Quiatchon, Norberto Arribas, Arturo F. Cardenas and Potenciano Aguero were members of the police force of the City of Bacolod, and in that same year the Chief of Police of Bacolod City filed administrative charges against them for having some of them tolerated prohibited games, another for maltreatment and another for failure to make arrest of offenders, and said charges duly sworn to by the Chief of Police were presented to Acting City Mayor Felix P. Amante who endorsed them to the city council for action and suspended the herein respondents from their positions. Upon receipt of the charges, the city council referred them to its Committee on Police, authorized its chairman to subpoena the herein respondents and furnished each and everyone of them with a copy of the administrative charges. Thereafter said committee set the administrative charges for hearing, but on the date fixed therefor the herein respondents did not appear or present any evidence in their behalf, while the Chief of Police appeared and adduced evidence against the herein respondents. After hearing, the Committee found them guilty of serious irregularities in the performance of their duties, violation of law, maltreatment and abuse of authority, dereliction of duty and sleeping while on duty. Accordingly, it resolved to recommend to Acting City Mayor Felix P. Amante, in the interest of public service, the immediate separation from the service of all the above-named respondents and that the positions occupied by them be declared vacant and immediately filled. This recommendation was approved by the Acting City Mayor, hence the herein respondents were separated from service and replaced by others. They then initiated in the Court of First Instance of Bacolod Cases Nos. 2054, 2055, 2056, 205S, 2059, 2063 and 2069 only against Felix P. Amante, in his capacity as Ad Interim Mayor of the City of Bacolod, to compel him to reinstate them on the ground that they have been illegally removed. After trial, said cases were decided by the herein respondent Judge Hon. Eduardo Enriquez in favor of his correspondents as plaintiffs therein, the pertinent portion of the dispositive part of the decision being, as follows:

"(b) Se ordena al recurrido, Felix P. Amante, o al funcionario que actualmente este ejerciendo el cargo de alcalde de la Ciudad de Bacolod, a que tan pronto como esta decision quede firme y ejecutoria, reponga en sus respectivos cargos a los recurrentes es Crispin Carmona, Pacifico Limbaga, Conrado Matavia, Monico Nobleza, Ernesto S. Quiatchon, Norberto Arribas, Arturo Cardenas y Potenciano Aguero;

(c) Se ordena el pago de los salarios de cada uno de los recurrentes mencionados en el parrafo anterior, cuyo importe se computara por el periododo de tiempo desde la fecha de sus respectivas destituciones hasta que fueren actualmente repuestos;

(d) Se ordena al recurrido Felix P. Amante para que pague a cada uno de los mencionados recurrentes, la cantidad de DOS MIL PESOS (P2,000.00) en conceptos de danos morales, y la cantidad adicional de CINCO MIL PESOS (P5,000.00), tambien a cada uno de los referidos recurientes, en concepto de danos ejemplares."

Felix P. Amante appealed from this decision directly to this Court where the said cases were docketed as G. R. Nos. L-8790, 6791, 3792, 6793, 3794, 3795, 3796 and 3797, all of which, on August 14, 1956, were decided in favor of the herein respondents Crispin Carmona et. al. and against the appellant Acting City Mayor Felix P. Amante on the ground that they were illegally removed in that the procedure adopted for their removal was not that prescribed by law.

It appears, however, that on December 15, 1954, and before the filing by Acting City Mayor Felix P. Amante of his appeal, the herein respondents Crispin Carmona et al. filed with the court below a petition for immediate execution of the aforequoted decision on the following ground; that Felix P. Amante was preparing to appeal from the decision; that if entertained, such appeal will cause delay in the final disposition of the case,' and that such delay will cause untold miseries and irreparable damage and injury to said respondents who were depending upon their monthly earnings for their support and that of their dependents. Acting on this petition and despite the opposition filed by the City Attorney of Bacolod in behalf of the aforementioned Acting City Mayor, on January 11, 1955, the herein respondent Judge issued an order granting the motion for immediate execution of the judgment, the dispositive part of which reads:

"POR TANTO, estimando bien fundada la inocion de los recurrentes, por la presente se ordena al Escribano para que expida la correspondiente orden de ejecucion de la sentencia dictada en las causas arriba tituladas en tanto en cuanto en ella se ordena la reposicion de los recurrentes en sus respectivos cargos por el Alcalde Interino, y el pago de sus salarios correspondientes al periodo desde que fueron destituidos lie sus cargos hasta que sean actualmente repuestos en ellos por el funcionario encargado de hacer dichos pagos. La ejecucion debera ser dirigida al Alcalde Interino de la ciudad de Bacolod en cuanto a la reposicion de los recurrentes, y al Tesorero de la misma Ciudad en cuanto al pago de los salarios atrasados, debiendo cumplimentarse la ordeii de ejecixcion de acuerdo con lo prescrito en el ar- ticulo 9 de la Regla 39 de los Reglamentos de los Tribunales."

and on February 16, 1955 said respondent Judge issued another order which reads as follows:

"Acting on the joint motion filed by the petitioners of even date and finding the reasons therein stated well-founded, the Clerk of Court is hereby directed to issue an alias writ of execution ordering the Provincial Sheriff or his deputy to enforce the payment of the back salaries of the above-named petitioners against the patrimonial property of the City of Bacolod by levying on all the property, real and personal, of every name and nature whatsoever, and which may be disposed of for value, and selling the same, and paying to the petitioners or their counsel, so much of the proceeds as will satisfy the judgment, in accordance with the provisions of Rule 39 of the Rules of Court."

Thereupon the herein petitioner Bacolod City brought this action to secure the annulment and voidance of the aforequoted orders in so far as they would authorize the levy on execution on all the properties, real and personal, of the herein petitioner to satisfy the judgment rendered in the civil cases mentioned above for back salaries during the period of the ouster of the herein respondent Crispin Carmona and his correspondents Arturo Cardenas et al., and also to obtain preliminary as well as permanent injunction to restrain the herein respondents Judge and Sheriff from enforcing said orders of January 11 and February 16, 1955.

As could readily be noted, the writs of execution now in dispute were issued before any final decision had been rendered in the aforesaid civil cases.

Petitioner contends (1) that the City of Bacolod was not a party in the aforesaid civil suits, hence it could not be made to bear the burden of satisfying the judgment rendered therein; (2) that the respondent judge abused his

discretion in granting the motions for the immediate execution of his decision without waiting the final outcome of the appeal interposed from said judgment; and (3) that from the judgment of the court below it can be seen that

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"the City of Bacolod was not intended to be made liable pecuniarily to the respondents policemen ousted by ex-Mayor Felix P. Amante for the reason that the charge of illegality in the act of Ex-Mayor Amante in ousting said petitioners is based on, the fact that said official acted in excess and abuse of his authority, having acted on the premises with malice and evident bad faith, as to make him personally liable for whatever damages and other consequences caused by his act for which the City of Bacolod should not be held answerable (*Mendoza v. de Leon*, 33 Phil. 50&), particularly in view of the provision of its Charter which reads:

"SEC. 5. The City Not Liable for Damages.- The City shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the City Council, or any other city officer, to enforce the provisions of this Charter, or any other law or ordinance, or from negligence of said Mayor, City Council, or other officers while enforcing or attempting to enforce said provisions. (Commonwealth Act No. 326)."

Contrasting the foregoing contentions, the respondents claim (a) that Acting Mayor Felix P. Amante was sued in his official capacity and therefore the judgment in question should be construed as ordering Felix P. Amante to pay the back salaries of the herein respondents not from his personal funds but from the coffers of the City of Bacolod in whose favor said respondents rendered their services; (b) that Section 5 of the Charter of the petitioner does not apply to the instant case, for it speaks of damages and injuries and not of back salaries, hence under the statutory construction "*Inclusio unius est exclusio alterius*," the aforesaid provision of the Charter of the petitioner cannot be invoked in its favor; and lastly, that "the execution of judgment issued by the Honorable Court of First Instance of Negros Occidental under date of February 15, 1955, is already an accomplished fact and therefore the present petition became more or less academic —

"in view of the fact that the order of execution and the corresponding garnishment made by the sheriff's office on the amount of P30,165.05 from the deposit of the City of Bacolod of P620,000.00 plus, in the Philippine National Bank, Bacolod branch, has been a fait accompli, the corresponding check to the said amount having been delivered by the Philippine National Bank to the sheriff's office on March 1, 1955, which in turn delivered it to the petitioners in the mandamus cases on March 2, 1955 thru counsel."

Carefully considered, the pivotal question involved in the case is whether the decision rendered in the aforementioned civil cases could be enforced against the City of Bacolod which was not made a party therein. The respondents vigorously contend that said judgment could be executed against the herein petitioner in view of the following facts: (1) The decision in question ordered the payment of back salaries of the respondents for services rendered as policemen for the benefit of the petitioner City of Bacolod; and (2) that Felix P. Amante was sued for the payment of said back salaries in his official capacity and not in his private capacity. But the herein petitioner, in turn, contends that in ousting the herein respondents, Mayor Felix P. Amante might have acted in bad faith and arbitrarily and therefore the petitioner has right to be heard. whether it should pay or not said salaries before the disputed judgment could be executed. It is a rudimentary rule that actions should be presented for and in behalf of the proper party plaintiff and against the proper party defendant. The herein petitioner has not been made a party in the aforesaid cases and had no opportunity to protect its rights concerning the payment of back salaries of the herein respondents during their ouster. Hence the decision rendered in said cases cannot absolutely be considered as binding on the herein petitioner and therefore no writ of execution could validly be issued against its property for the purpose of satisfying the disputed back salaries of the respondents.

In the case of *Angara vs. Gorospe*, G.R. No. L-9230, decided by this Court on April 22, 1957, wherein Dr. Angara filed a suit for quo warranto against Dr. Gorospe for usurpation of the position of City Health Officer of the City of Baguio and where the Mayor of the City of Baguio, Hon. Alfonso Tabora, the City Treasurer Domingo Cabali

and the City Auditor Mauro Miranda were included as party defendants, but not the City of Baguio specifically, we held that the trial court had no right to order the said respondent city officials to pay the therein petitioner Angara his accrued salaries during the pendency of that case when the funds with which said payment was to be made belonged to the City of Baguio which was not made a party to the case. We further held that "as the City of Baguio is not a party to these proceedings, it cannot be compelled without due process of law, to pass an ordinance appropriating and authorizing the disbursement and payment to Dr. Angara of the alleged accrued salaries he claims for a period during which he did not render any services to the City of Baguio."

While the facts of the Angara case are not exactly similar to the present one, nevertheless, we hold that the doctrine laid down therein to the effect that the City of Baguio, not having been made a party in that case, cannot be compelled without due process of law to pay the salaries therein claimed by plaintiff Angara, is completely applicable to the case at bar where the herein petitioner City of Bacolod is made to pay the back salaries of the herein respondents, without due process of law and without any decision rendered against it.

On the other hand, we find that Section 2 of Rule 39 of the Rules of Court, upon which the orders complained of herein were based, provides that "Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order." From this provision of law, it could readily be seen that the prevailing party should notify the adverse party of the motion for immediate execution in order that the same may be acted upon by the court. In this particular case, the aforequoted provision of law has not been fulfilled. And it could not have been fulfilled, because the City of Bacolod was not a party in the aforesaid civil cases and therefore it could not have been notified of the motion for immediate execution of the decision rendered therein.

Anent the allegation that the disputed orders had been fully executed because a check for the amount of P30,165.05 was delivered by the Philippine National Bank to the respondent sheriff on March 1, 1955, who, in turn, delivered it to the petitioner in the mandamus cases mentioned above, we find it unsupported by the records of the case and therefore it should not be entertained. Besides, the mere issuance of said check does not necessarily mean complete execution of the disputed orders.

And in view of the foregoing conclusions we reached, we deem it unnecessary to decide the other issues raised by the parties.

Wherefore, the orders of the respondent judge, dated January 11, 1955 and February 16, 1955, are hereby, declared null and void in so far as they authorize the levy on execution on all the properties, real and personal, of, herein petitioner for the purpose of satisfying the judgment concerning the back salaries of the respondent policemen during the period of their ouster; and the preliminary injunction issued in this case is hereby made permanent, restraining the respondent judge and sheriff from enforcing said orders. Without costs.

Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J.B.L., and Felix, JJ., concur.

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