

**FILOMENO ABROT, GORGONIO TORRECHILLA, NOEL GEOLLEGUE,
ERLINDA CASTILLO, FLORENTINO PAGUNSAN, ELIAS DEQUINA,
FRANCISCO SELOTERIO, AND TOMAS HILAGA, JR., PETITIONERS, VS.
THE COUR...**

G.R. No. L-40641. September 09, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision promulgated on September 19, 1974 by respondent Court of Appeals[1] in CA-G.R. Nos. 50011-R to 50017-R.

The individual petitioners were former employees of respondent City of La Carlota, Negros Occidental, holding various positions and appointments as listed herein below:

Name

Position

Civil Service

Law Provision

1. Filomeno Abrot

Municipal Secretary

Sec. 5 (f)

2. GorgonioTorrechilla

Market Helper

Sec. 5 (g)

3. Noel Geollegue

Market Cleaner

Sec. 5 (g)

4. Erlinda Castillo

Rural Health Attendant

Sec. 24 (d)

5. Florentino Pagunsan

Laborer

Sec. 5 (g)

6. Elias Dequiña

Laborer

Sec. 5 (g)

7. Francisco Seloterio

Road Foreman

Sec. 24 (c)

8. Tomas Hilaga, Jr.

City Community

Sec. 24 (c)

Development Officer

All of them were appointees of former City Mayor Jaime Mariño, who was defeated by respondent Luis G. Jalandoni in the local elections of November, 1967.

After Mayor Jalandoni assumed office in January, 1968, the eight petitioners were separated from the service on various grounds. Abrot was allegedly made to resign. Torrechilla, Geollegue, Castillo, Pagunsan, Dequina and Seloterio were laid off for "lack of funds and for reasons of public interest". Hilaga's position was abolished in the 1968-69 budget for reasons of economy.

On July 20, 1968, the Municipal Board of respondent City of La Carlota enacted Ordinance No. 49, series of 1968, approving the Budget for Fiscal Year 1968-69 effective July 1, 1968.[2] The Budget Analysis for said fiscal year revealed that 106 positions were abolished including the positions of herein petitioners (except that of petitioner Abrot).[3]

Questioning their separation from the service, petitioners instituted seven (7) separate actions for reinstatement, payment of back salaries, and damages against herein respondents before the Court of First Instance of Negros

Occidental.

Petitioners anchored their claim on their right to security of tenure guaranteed by the Constitution; that the termination was without due process and contrary to the Civil Service Law and that the abolition and termination was made in bad faith and politically motivated, the economic reasons set forth being merely a subterfuge to justify the illegal termination. Petitioner Seloterio also invoked the benefits of the Veterans Law (RA 1363) to support his claim to be retained in office.

In separate Answers to said Complaints, respondents averred mainly that petitioners' separation from the service was motivated solely by good faith inasmuch as when respondent City Mayor took over the reins of the City government, it was in the throes of a grave financial crisis due to the huge financial overdrafts, deficits, unpaid statutory and contractual obligations of more than one (1) million pesos and the only immediate and available remedy to prevent further financial deterioration was to reduce the working force of the City government.

After joint trial, the Court a quo dismissed all the Complaints. It gave full credence to respondents' evidence showing the imperative necessity for the termination of petitioners and later the abolition of their positions in the 1968-69 plantilla. Petitioners took separate appeals to respondent Court of Appeals.

At this juncture, it should be noted that petitioner Florentino Pagunsan, co-complainant of petitioner Dequiña in Civil Case No. 8853, did not present any evidence before the trial Court. The records also show that neither did he sign the Notice of Appeal nor was he among the signatories to the Motion for Early Resolution of this case filed on November 7, 1979.

On September 19, 1974, the Court of Appeals promulgated a joint Decision modifying the trial Court's judgment as follows:

"WHEREFORE, judgment is hereby rendered as follows:

a) Affirming the dismissal of the complaints in CA-G.R. No. 50011-R (re Filomeno Abrot), 50014-R (re Erlinda Castillo), 50016-R (re Francisco Seloterio) and 50017-R (re Tomas Hilaga, Jr.); and

b) In CA-G.R. No. 50013-R (re Noel Geollegue, 50015-R (re Florentino Pagunsan and Elias Dequiña and 50012-R (Gorgonio Torrechilla), the judgments appealed from are hereby reversed and, in lieu thereof, let another one be entered in each of them ordering the defendants to pay the plaintiffs-appellants in said cases their back salaries from January 16, 1968 to June 30, 1968, without benefit of reinstatement; and to pay the cost."

This Petition seeks a review of said judgment.

The basic issue affecting all petitioners (except Abrot) is whether or not respondent Court of Appeals erred in finding that the retrenchment policy undertaken by respondents justified the abolition of the positions of petitioners. Corollary issues are (1) whether or not respondent Court of Appeals erred in not ordering the reinstatement of petitioners Torrechilla, Geollegue and Dequiña; and (2) whether or not respondent Court erred in finding that the appointments of petitioners Castillo and Seloterio were temporary and that, therefore, they are not entitled to security of tenure.

Considering that petitioners' factual situations are not identical, their cases will be dealt with individually, except where there are issues common to several of them.

1. Re: Filomeno Abrot, Secretary of the Municipal Board

The Court of Appeals upheld the validity of Abrot's termination as Secretary of the Municipal Board pursuant to the Charter of the City of La Carlota, reading:

"Sec. 14. Secretary of the Board. - The Board shall have a secretary, who shall be appointed by the mayor to serve during the term of appointing power. A vacancy in the office of the secretary shall be filled temporarily or for the unexpired term in like manner. x x x " (Emphasis supplied).[4]

We affirm. It is obvious that contrary to his contention, Abrot is not entitled to the constitutional guarantee of security of tenure.

2. Tomas Hilaga, Jr., City Development Officer

The position of City Development Officer held by him was omitted in the City budget for 1968-1969 and his services were terminated effective July 15, 1968 on the ground that the office was no longer necessary, and for lack of funds.

The Court of Appeals upheld the validity of the abolition of the position stating that it was not done in bad faith nor for political reasons.

We find no error in this conclusion. In the case of Arao vs. Luspo, 20 SCRA 722 (1967), this Court held that the abolition of the position in good faith is not the removal prohibited by the Constitution. Abolition of a position for reasons of economy is valid. As observed by the Court of Appeals, Hilaga "failed to successfully rebut the showing made by the defendants as to the precarious financial condition of the City as shown by its huge overdraft and existing statutory and contractual obligations."

3. Erlinda Castillo, Rural Health Attendant. Francisco Seloterio, Road Foreman

We also sustain the findings of respondent Court upholding the termination of petitioners Erlinda Castillo and Francisco Seloterio. While their appointments were denominated as "provisional" under section 24(c) of the then Civil Service Law (although in respect of Castillo, it was also approved under section 24(d) as temporary[5], they were, in fact, mere temporary appointments. For what the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than an appropriate one for the position to which he was appointed.[6] Since Castillo and Seloterio did not possess any civil service eligibility, their appointments are considered temporary.[7] Well-settled is the rule that temporary appointees may be terminated at any time even without cause.[8] They have no fixed tenure.

Being a war veteran cannot help petitioner Seloterio in retaining his position under Republic Act No. 1363. As pointed out by respondent Court, the ruling laid down in Gonzales vs. Aldana, 107 Phil. 794 (1960), which held that veterans are given not only preference in appointment but also the right to retain the position as against another appointee, is not applicable herein as petitioner Seloterio was not being replaced by another appointee. For one, his appointment was temporary and, for another, the position was subsequently abolished by the City.

4. Noel Geollegue, Market Cleaner Elias Dequiña, Laborer Gorgonio Torrechilla, Market Helper

Geollegue and Torrechilla were dismissed effective January 16, 1968 while Dequiña was terminated effective February 1, 1968. However, their appointments were all attested as "permanent" under Section 5(g) of Republic Act No. 2260 as unskilled laborers in the non-competitive service. They may not, therefore, be removed except for cause.[9] Their summary dismissal from the service was illegal and arbitrary. However, the abolition of their positions in the City budget for the Fiscal Year 1968-1969 for reasons of retrenchment will have to be sustained.

We accordingly uphold respondent Court's award of backwages in favor of petitioners Geollegue, Dequiña and Torrechilla from the date of their respective dismissal from the service to June 30, 1968, up to which latter date their positions were still included in respondent City's budget.

Petitioners insist, however, on their reinstatement. While admittedly, their appointments were approved under

section 5(g) of RA 2260 and, therefore, permanent in nature, we cannot accede to petitioners' prayer that we decree their reinstatement as respondents have clearly established the tenability of the retrenchment program they had embarked on thus impelling them to abolish the positions of herein petitioners. For we have held that the fundamental protection against removal of civil service employees "except for cause as provided by law" does not apply, where there has been no removal of the employee but an abolition in good faith of his position, for such abolition produces his lawful separation from the service.[10]

It must also be stressed that a reduction of force may be effected in the interest of economy as provided by section 24(g) of the Civil Service Act (RA 2260), the law then prevailing. In the case at bar, there is sufficient evidence showing that respondent City of La Carlota was in dire financial difficulties which impelled respondents to resort to the abolition of petitioners' positions (except Abrot). Quoted hereunder is the finding of respondent Court on this aspect:

"It was shown that as of January 2, 1968, the only funds in the possession of the City Cashier was barely over P5,000.00 (Exhibit 16). In the 'Report' submitted by the City Auditor dated January 8, 1968 to Mayor Jalandoni, it was shown that, as of December 31, 1967, the total contractual and statutory obligations of the city amounted to P999,729.19 including the amount of P276,720.40 representing the unpaid back salaries and wages of city employees for the months of June, October, November and December 1967 (Exhibit 13). A verification of the city trial balance as of said date showed an overdraft of P166,295.45. On January 11, 1968, the new municipal board passed a resolution authorizing the city mayor to solicit a loan of P120,000.00 from the Philippine National Bank 'in order to pay the salaries and wages of the city employees and laborers on time'. Although, the Philippine National Bank advanced the sum of P20,000.00 on the personal guaranty of the city mayor and the members of the municipal board, the resolution was disapproved by the Department of Finance on the ground that the City of La Carlota has not yet paid a previous budgetary loan of P150,000.00 to the Central Bank of the Philippines (Exhibit 5). The total unpaid salaries of the city employees for the months of June, October, November and December 1967 was P276,720.40 (Exhibit 31). Included among those employees who failed to receive their salaries for the said months were the herein plaintiffs-appellants who were paid their back salaries for the said period only on June 30, 1968 (Exhibits 20-25)."[11]

We are bound by the foregoing factual finding of the Court of Appeals, in the absence of any showing that there has been a misapprehension of facts or that a grave abuse of discretion was committed in the appreciation of the evidence, or that the situation calls for an exception to the general rule.[12]

WHEREFORE, modifying the Decision under review, in that Florentino Pagunsan is excluded from this judgment, respondents City of La Carlota and City Mayor Luis G. Jalandoni, or the incumbent City Mayor of La Carlota, are hereby ordered to pay petitioners Gorgonio Torrechilla, Noel Geollegue and Elias Dequiña back salaries from their respective dates of dismissal up to June 30, 1968. The judgment under review is affirmed in all other respects.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur. Makasiar, J., on official leave. Vasquez, J., took no part.

[1] Ninth Division composed of Justices Mateo Canonoy, Conrado M. Vasquez (Ponente), and B. S. de la Fuente.

[2] Exhibits "33", pp. 83-106, Folder of Original Exhibits.

[3] Exhibit "XX", pp. 107-109, *ibid*.

[4] p. 69, Rollo.

[5] Exhibit "Y", p. 34, Folder of Original Exhibits.

[6] *Ata, et al. vs. Namocatcat, et al.*, 47 SCRA 314 (1972).

[7] *Ramos vs. Romualdez*, 32 SCRA 590 (1970).

[8] *Mendiola vs. Tancinco*, 52 SCRA 66 (1973).

[9] *Gementiza vs. CA, et al.*, G.R. No. L-41717-33, April 12, 1982.

[10] *Adle vs. Municipality of La Castellana*, 28 SCRA 633, 1969 citing *Castillo vs. Pajo*, 103 Phil. 515; *Lavinia vs. de Leon*, 19 SCRA 230 (1967).

[11] pp. 72-73, Supreme Court Rollo.

[12] *Gimeno vs. Court of Appeals*, 80 SCRA 623 (1977).

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