

R. MARINO CORPUS, PETITIONER AND APPELLANT, VS. MIGUEL CUADERNO, SIT., ET AL., RESPONDENTS AND APPELLANTS.*G. R. No. L-23721. March 31, 1965*

Ponente: REYES, J.B.L., J.

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Not satisfied with the decision of the Court of First Instance of Manila, in its Civil Case No. 41226, both the above-named petitioner and respondents interposed their respective appeals to the Court of Appeals. The Court of Appeals, however, certified the said appeals to this Court to avoid splitting them, it appearing that, while the Court of Appeals has jurisdiction over the respondents' appeal, the amount in controversy in the petitioner's appeal (P574,000.00 in damages and attorneys' fees) is beyond the jurisdiction of the said appellate court.

The essential facts are as follows: On 7 March 1958, petitioner-appellant, R. Marino Corpus, then holding position of "Special Assistant to the Governor, In-charge of the Export Department" of the Central Bank, Position declared by the President of the Philippines 24 January 1957 as highly technical in nature, and held as such by both the present litigants, was administratively charged by several co-employees in the export department with dishonesty, incompetence, neglect of duty and/or abuse of authority, oppression, conduct unbecoming a public official, and of violation of the internal regulations of the Central Bank.

On 18 March 1958, the Monetary Board suspended the petitioner from office effective on said date and created a three-man investigating committee composed of Atty. Guillermo de Jesus, chairman, and Atty. Apolinar Tolentino, Assistant Fiscal of the City of Manila, and Professor Gerardo Florendo, senior attorney of the Central Bank, members. In its final report dated 5 May 1959, the investigating committee, "after most extensive hearings on which both complainants and respondents were afforded all opportunity to submit their evidence, and after a most exhaustive and conscientious study of the records and evidence submitted in the case", made the following conclusion and recommendation:

"(I) In view of the foregoing, the Committee finds that there is no basis upon which to recommend disciplinary action against respondent, and therefore respectfully recommends that he be immediately reinstated."

Nevertheless, on 20 July 1959, the Monetary Board approved the following resolution:

"After an exhaustive and mature deliberation on the report of the aforesaid fact-finding committee in conjunction with the entire records of the case and representations of both complainants and respondent, through their respective counsel; and further, after a thorough review of the service record of the respondent, particularly the various cases presented against him, object of Monetary Board Resolution No. 1527 dated August 30, 1955, which all involve fitness, discipline, etc. of respondent; and moreover, upon formal statement of the Governor that he has lost confidence in the respondent as Special Assistant to the Governor and In-Charge of the Export Department (such position being primarily confidential and highly technical in nature), the Monetary Board finds that the continuance of the respondent in the service of the Central Bank would be prejudicial to the best interests of the Central Bank and, therefore, in accordance with the provisions of Section 14 of the Bank Charter, considers (1) respondent R. Marino Corpus, resigned as of the date of his suspension."

Corpus moved for the reconsideration of the above resolution, but the Hoard denied it, after which he filed an action for certiorari, mandamus, quo warranto, and damages, with preliminary injunction, with the Court of First Instance of Manila. The said court, after trial, rendered judgment declaring the Board resolution null and void, and ordering, among others, the reinstatement of the herein petitioner and awarding him P5,000.00 as attorney's fees. As aforesaid, both the petitioner and the respondents appealed the judgment.

Per its resolution, the premises of the board in dismissing the petitioner are: (1) its deliberation of the report of the committee, the records of the case and the representations of the parties; (2) the service record of the petitioner, particularly the various cases against him in 1955; and (3) loss of confidence by the Governor, with the implied concurrence of the Monetary Board. No specific findings were made; it is, therefore, evident that the petitioner was removed on the third ground, since he was neither removed for guilt of the charges against him in the administrative complaint nor on account of his previous cases in 1955 because he had suffered the correspondent penalty imposed upon him on the counts for which he was then found guilty, and because he was thereafter promoted in salary and to the position in question by the Monetary Board on recommendation of the Governor.

The appeal of the Central Bank and its Monetary Board is planted on the proposition that officers holding highly technical positions may be removed at any time for lack of confidence by the appointing power, and that such power of removal is implicit in section 1, Art. XII of the Constitution:

"Section 1. A Civil Service embracing all branches and such visions: of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness to be determined as far as practicable by competitive examination."

It is argued that for the three classes of positions referred to in the constitutional disposition (policy-determining, primarily confidential and highly technical), lack of confidence of the one making the appointment constitutes sufficient and legitimate cause of removal.

We find the appeal of the Central Bank authorities to be clearly untenable.

In the first place, the loss of confidence ground, on which the dismissal is sought to be predicated, is a clear and evident afterthought resorted to when the charges, subject-matter of the investigation, were not proved or substantiated. The Monetary Board nowhere stated anything in the record which the committee failed to consider in recommending exoneration from the charges; it nowhere pointed to any substantiation of the charges; it, therefore, relied only on the statement of the loss of confidence made by Governor Cuaderno. We find in the particular set of facts herein that the alleged loss of confidence is clearly a pretext to cure the inability of substantiating the charges upon which the investigation had proceeded.

The court, therefore, can not rely on the so-called "loss of confidence" as a reason for dismissal. And inasmuch as the charges against petitioner were unsubstantiated, that leaves no other alternative but to follow the mandate that—

"No public officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law" (Sec. 4, Art. XII, Constitution of the Phil.)

Since in the interest of the service reasonable protection should be afforded civil servants in positions that are by their nature important, such as those that are "highly technical", the Constitutional safeguard requiring removal or suspension to be "for cause as provided by law" at least demands that their dismissal for alleged "loss of confidence", if at all allowed, be attended with prudence and deliberation adequate to show that said ground exists.

In the second place, the argument for the Monetary Board ignores the self-evident fact that the constitutional provisions merely constitute the policy determining, primarily confidential, and highly technical positions as exceptions to the rule requiring appointments in the Civil Service to be made on the basis of merit and fitness as determined from competitive examinations (sec. 1, *supra*) (*Jover vs. Borra*, 93 Phil., 506; 49 Off. Gaz., (No. 7) 2755), but that the Constitution does not exempt such positions from the operation of the principle emphatically and categorically enunciated in section 4 of Article XII, that—

"No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

and which recognizes no exception. The absolute rule thus propounded is repeated almost verbatim in Section 132 of the Central Bank Charter (Rep. Act 265) that provides in equally absolute terms that—

"No officer or employee of the Central Bank subject to the Civil Service law or regulations shall be removed or suspended except for cause as provided by law."

It is well to recall here that the Civil Service Law in force (Rep. Act No. 2260) divides positions into three categories: competitive or classified; non-competitive or unclassified service; and exempt service, the last being expressly excluded from the scope of the Civil Service Act (sec. 3, R. A. 2260,). In view of section 3 and 5 of the same law, providing that—

"SEC. 3. Positions Embraced in the Civil Service.—The Philippine Civil Service shall embrace all branches, subdivisions and instrumentalities of the Government, including government-owned or controlled corporations, * * *"

SEC. 5. The non-competitive service.—The non-competitive or Unclassified service shall be composed of positions expressly declared by law to be in the non-competitive or unclassified service or those which are policy-determining, primarily confidential or highly technical in nature." (R.A. 2260)

it is indisputable that the plaintiff Corpus is protected by the Civil Service law and regulations as a member of the non-competitive or unclassified service, and that his removal or suspension must be for cause recognized by law (*Unabia vs. Mayor*, 99 Phil., 253; 53 Off. Gaz., 132; *Arcel vs. Osmena*, 111 Phil., 171; *Garcia vs. Executive Secretary*, L-19748, Sept. 13, 1962).

The tenure of officials holding primarily confidential positions (such as private secretaries of public functionaries) ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal. But the situation is different for those holding highly technical posts, requiring special skills and qualifications. The Constitution clearly distinguishes the primarily confidential from the highly technical, and to apply the loss of confidence rule to the latter incumbents is to ignore and efface the differential provision expressly made by our fundamental charter. Moreover, it is illogical that while an ordinary technician, say a clerk, stenographer, mechanic, or engineer, enjoys security of tenure and may not be removed at pleasure, a highly technical officer, such as an economist or a scientist of avowed attainments and reputation, should be denied security and be removable at any time, without right to a hearing or chance to defend himself. No technical man worthy of the name would be willing to accept work under such conditions. Ultimately, the rule advocated by the Bank would demand that highly technical positions be filled by persons who must labor always with an eye cocked at the humor of their superiors. It would signify that the so-called highly technical positions will have to be filled by incompetents and yes-men, who must rely not on their own qualifications and skill but on their ability to carry favor with the powerful. The entire objective of the Constitution in establishing and dignifying the Civil Service on the basis of merit, would be thus negated.

Of course a position may be declared both highly technical and confidential, as the supreme interests of the state

may require. But the position of plaintiff-appellant Corpus is not of this category.

The decision in *De los Santos vs. Mallare*, 87 Phil. 289, relied upon by the appellant Bank, is not applicable, since said case involved the office of city engineer, that the court expressly found to be "neither primarily confidential, policy determining nor highly technical" (at p. 297, in fine).

Turning now to the appeal of plaintiff Marino R. Corpus. The latter complains first against the allowance of only P5,000.00 attorneys' fees by the court below, stressing that the stipulation of facts between the parties clearly recites that Corpus had agreed to pay his attorney P20,000.00 as fees. It is to be noted, however, that the agreement between client and lawyer can not bind the other party who was a stranger to the fee contract. While the Civil Code allows a party to recover reasonable counsel fees by way of damages, such fees must lie primarily in the discretion of the trial court, and no abuse of that discretion is here shown. The same thing can be said as to plaintiff's recovery of moral damages: the trial court was evidently not satisfied with that such damages were adequately proved, and on the record, we do not believe we would be warranted in interfering with its judgment.

The claim for exemplary damages must presuppose the existence of the circumstances enumerated in Articles 22.51 and 2232 of the Civil Code. That is essentially a question of fact that lies within province of the court a quo, and we do not believe that in opining that the position of Corpus was one dependent on confidence, the defendant Monetary Board necessarily acted with vindictiveness or Wantonness, and not in the exercise of honest judgment.

Wherefore, the decision appealed from is hereby affirmed, without special pronouncement as to costs.

Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

CONCURRING

BENGZON, J. P., J.

I agree with the decision because, as stated therein, in this particular case the so-called "loss of confidence" is a clear afterthought resorted to only when the charges subject-matter of the investigation could not be substantiated. The resolution of the Monetary Board considering the petitioner resigned, stated that his position was "primarily confidential" in addition to its being- "highly technical", as declared by the President, thereby noticeably seeking to put it within a category where "loss of confidence" operates to terminate the employment. Furthermore, a reference to former charges against petitioner which had already been disposed of prior to his promotion, obviously provides no apparent basis for the stand therein taken. As a result, the alleged "loss of confidence" cannot be relied upon as a reason for petitioner's dismissal. This point, I believe, suffices to affirm the decision of the court a quo with respect to respondents' appeal.

A ruling on the far-reaching question of whether or not "loss of confidence" is a lawful ground for dismissal from a highly technical position in the Civil Service should to my mind, await the instance when it is absolutely required in deciding a case. A further discussion could then be pursued on: (1) a highly technical position that involves utmost confidence, e.g., that of a scientist in an Atomic Energy Research Office dealing with secrets that affect security of the State; (2) the rule as to policy determining positions; and (3) whether Section 1, Article XII of the Constitution speaks of "policy-determining, primarily confidential or highly technical in nature" disjunctively or together.

Consequently, I reserve my view as to whether incumbents of highly technical positions in the Civil Service may or may not be removed for "loss of confidence in a proper case, and I concur with the decision in all other

respects.

Zaldivar, J., concurs.

Judgment affirmed.

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