

THE CITY OF CEBU, CITY COUNCIL OF THE CITY OF CEBU, CEBU CITY TREASURER, CEBU CITY AUDITOR AND MARIO D. ORTIZ, PETITIONERS, VS. HON. JOSE M. MENDOZA, JUDGE OF THE COURT OF FIRST...

G.R. No. L-26321. August 19, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

In the resolution promulgated on February 25, 1975 five Justices voted for the dismissal of the petition in this case for certiorari and mandamus, which was intended to compel the lower court to give due course to the petitioners' appeal to the Court of Appeals. Four Justices voted for giving due course to the appeal. As the Court was divided, the petition was denied (Sec. 11, Rule 56, Rules of Court).

The petitioners herein, filed motions for reconsideration of the "judgment" of this Court. Respondent Efren M. Arnejo prayed that the motions be denied (petitioner Mario D. Ortiz did not furnish Arnejo with a copy of his motion for reconsideration).

Inasmuch as the said resolution embodies the opinion of only five Justices, it cannot be regarded as the Court's decision en banc. It cannot be the object of a motion for reconsideration or re-hearing. Such a motion is addressed to the Court's "final order or judgment." In this case, the petition was denied because the necessary majority could not be obtained for a decision.

Petitioner's motions could at most be treated as pleadings asking the court to deliberate anew so that a consensus might be reached. The arguments adduced in the two motions are the same contentions previously deliberated upon by this Court.

Petitioner Ortiz filed an alternative motion for clarification. He asked this Court to hold that respondent Efren M. Arnejo "is not entitled to reinstatement" to the position of Assistant Chief of Police of Cebu City and to the payment of back salaries and damages. The other petitioners in their motion for reconsideration argue that the supervening facts adverted to in the resolution constitute a waiver or abandonment on Arnejo's part of his claim for the position.

They observe that the lower court's judgment, requiring Arnejo's reinstatement to the position of Assistant Chief of Police of Cebu City, cannot be executed because the position is lawfully occupied by another person (not a party in the main case and in this case) and, hence, Arnejo is not entitled to collect the salaries for that position.

The Court is of the opinion that the question of whether the judgment in Arnejo's favor can be executed in view of the supervening facts has to be resolved in the execution proceeding in the original case, from which this incident stemmed and which is Civil Case No. R-8612 of the Court of First Instance of Cebu, Branch VI, "Efren Arnejo vs. Sergio Osmeña, Jr. et al."

The mere fact that the petition for certiorari and mandamus in this case was dismissed and that the appeal of respondents in Civil Case No. R-8612 was not allowed does not imply that this Court sanctions the execution of the judgment in Arnejo's favor.

While generally a final and executory judgment may be executed as a matter of right, nevertheless, when "facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask a competent court to stay its execution or prevent its enforcement" (2 Moran's Comments on the Rules of Court, 1970 Ed., p. 260, citing *Ocampo vs. Sanchez*, 97 Phil. 472 and *City of Butuan vs. Hon. Ortiz*, 113 Phil. 636) or "may ask the court to modify or alter the judgment to harmonize the same with justice and the facts" (*De la Costa vs. Cleofas*, 67 Phil. 686, 692).

"After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend its execution and grant relief as the new facts and circumstances warrant" (Per Makalintal, J. in *Abellana vs. Dosdos*, L-19498, February 26, 1965, 13 SCRA 244, 248 citing *Candelario vs. Canizares*, 114 Phil. 672, 679 citing in turn the *City of Butuan* case, *supra*. See *Penuela and Pedregosa vs. Hornada*, 111 Phil. 618).

Hence, the issues raised in petitioners' motions as to the enforceability of the judgment in Arnejo's favor should be ventilated in the lower court when he files a motion for execution.

WHEREFORE, the motions for reconsideration are denied.

SO ORDEREDS.

Makalintal, C.J., Esguerra, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Castro, J., concurs in the result.

Teehankee, J., concurs in a separate opinion.

Barredo, J., concurs on the express understanding that the issue that respondent Arnejo is not entitled to either reinstatement or back salaries is still open.

Fernando, Makasiar, and Antonio, JJ., did not take part.

CONCURRING OPINION

TEEHANKEE, J.:

I concur. The original petition for mandamus to give due course to petitioners' proposed appeal from the lower court's judgment of September 10, 1965 was dismissed as per the Court's Resolution of February 25, 1975 inasmuch as the necessary eight votes for granting the petition could not be secured (with five Justices, the Chief Justice, Castro, Teehankee, Muñoz Palma and Aquino, ponente, JJ. holding that the appeal was not perfected on time and four Justices, Barredo, Esguerra, Antonio and Fernandez, JJ. holding the contrary). Since there has been no change in this situation, notwithstanding the naming of two new members, Justices Concepcion, Jr. and Martin, JJ. (vice Justice Fernandez who retired on March 28, 1915)/petitioners' motion for reconsideration must necessarily fail.

The question now centers on the matter of executing the lower court's judgment of September 10, 1965 which has now become definitely final and executory with the dismissal of the mandamus petition and denial of the motion

for reconsideration.

The main resolution holds that the issues raised in the motion for reconsideration as to the enforceability of the judgment in respondent Arnejo's favor "should be ventilated in the lower court when he files a motion for execution" and cites the exception (to the general rule of enforceability of final judgments) that where new facts have supervened after the finality of the judgment, the court may admit evidence thereof and suspend execution of the final judgment and grant relief as the new facts and circumstances warrant.

I consider this exception to be of the most limited scope which may be invoked only under the most exceptional circumstances to prevent grave oppression and injustice or where there has been in effect a waiver or satisfaction of the judgment. The general and universal rule is that there must be an end to litigation and once a judgment has become final, (whether after appeal or because of a failure to appeal on time), even though it may be erroneous in the light of the facts of record, such judgment can no longer be relitigated and must be enforced by execution as a matter of right.

Since the lower court's judgment was clearly in error in ordering the reinstatement of respondent Arnejo to the position of assistant chief of police of Cebu City (to which he had merely been designated in an acting capacity) with backwages and damages, I deem it proper to restate and amplify my views on this question, as already indicated in my previous separate opinion of February 25, 1975, in the hope that it may serve of some assistance to the lower court and the parties in the execution stage and avoid further undue delay in closing out the case.

I reiterate my view that the reinstatement of respondent Arnejo to the position of Acting Assistant Chief of Police of Cebu City can no longer be validly done (notwithstanding the finality of the judgment) principally for the reasons stated in Justice Antonio's separate opinion of February 25, 1975 that

"x x x Respondent Arnejo is deemed to have abandoned his office as such, (1) when he assumed the duties of Acting Chief of Police of Cebu City, pursuant to a designation made by President Ferdinand E. Marcos, and received the salaries of the position from February 22 to June 15, 1966, but his appointment therefor was not confirmed; and (2) when he occupied the position of Acting Chief of Police of Lapu-Lapu City, from August 1, 1968 and up to the present, and received the corresponding compensation."

In other words, the execution of that portion of the judgment ordering Arnejo's reinstatement as assistant chief of police of Cebu City can no longer be sought, since he had waived the same by his acceptance after the judgment of other positions, particularly that of acting chief of police of Lapu-Lapu City which he has reportedly held to the present, and for which he has been paid the corresponding compensation.

As to the money portion of the judgment for backwages, exemplary damages and attorney's fees totalling PI 5,967.50 as computed by the Cebu City treasurer and recommended for appropriation but held in abeyance by the city council pending the outcome of the case at bar (page 4, resolution of February 25, 1975), this portion of the judgment (although based on the lower court's erroneous premise that Arnejo was entitled to reinstatement to the position of acting assistant chief of police to which he had not been appointed but merely designated and to which he could not lay any legal claim whatsoever after the termination or lapsing of his designation thereto and certainly, not after his acceptance of other positions as above stated) has now become final and executory by virtue of the Court's dismissal of the mandamus petition and is therefore enforceable by writ of execution. Whether the City in turn may recover this monetary loss against those responsible for failure to timely prosecute its appeal is a matter that should properly be ventilated in another action.

Martin and Muñoz Palma, JJ., concur.

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