

**LUCIANO AZUR AND NICOLAS BULALACAO,
PETITIONERS-APPELLANTS, VS. THE PROVINCIAL BOARD, THE
PROVINCIAL TREA-SURER, AND PROVINCIAL AUDITOR, AND THE
PRO-VINCIAL WARDEN, CAMARINES SU...**

G.R. No. L-22333. February 27, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from an order of the Court of First Instance of Camarines Sur, in its Civil Case No. 4871, dismissing the complaint and the subsequent order denying the motion for reconsideration of said order of dismissal.

On March 17, 1960, a complaint for reinstatement and collection of salaries and damages was filed before the Court of First Instance of Camarines Sur by plaintiffs-appellants Luciano Azur and Nicolas Bulalacao and one Pedro Pasilaban,[1] against the Provincial Board and the above-named officials of the Province of Camarines Sur. The complaint alleged that:

Plaintiffs are provincial guards who have been holding their positions continuously for more than five years; they took the Patrolman Qualifying Examination at Naga City on February 27, 1960; on or about January 15, 1960, they were notified by the Secretary of the defendant-appellee Provincial Board that their positions had been abolished by its Resolution No. 16, Series of 1960, and that thirty (30) days thereafter their work "is already terminated"; on January 30, 1960, Resolution No. 16 was amended by Resolution No. 45 which, "in order to economize", reduced the forty-five (45) existing positions of provincial guards to thirty-five (35), ten (10) positions eliminated and their items abolished "subject to the approval of the Secretary of Finance"; said Resolution No. 45 had not been approved by the Secretary of Finance and, was, therefore, still ineffectual; the real purpose in separating the ten (10) persons occupying the positions abolished was not to economize but to have them replaced by persons belonging to the political party of the new provincial administration; prior to the separation of plaintiffs from the service, the provincial administration hired five (5) new provincial guards who were later on separated for sometime to conceal defendants' intention to replace plaintiffs, as in fact, they were again allowed to work on March 16, 1960; the appointment of said five (5) new provincial guards is illegal; plaintiffs have been rendering service continuously from February 15, 1960 up to the filing of the complaint but had not received their salaries because defendants were compelling them to submit their resignations and clearances before they would be paid; on February 23, 1960, plaintiffs informed defendants of the illegality of their separation from the service and demanded their pay for services rendered until they are legally separated by competent authority, but they had not yet been paid on the date the complaint was filed; due to their illegal separation from the service and the refusal of defendants to pay their salaries, they have suffered damages and have, therefore, engaged the services of counsel, for a fee, for the protection of their rights. The complaint ends with the prayer that defendants be ordered to reinstate them and, on the other hand, to separate from the service the five (5) new provincial guards whose appointments are illegal; to pay them the salaries to which they are entitled until they resign or are legally separated; and to pay them P600.00 as attorney's fees and P6,000.00 in

moral damages.

In due time, defendants-appellees filed their answer to the complaint. In said answer, defendants-appellees admitted the employment and subsequent dismissal of plaintiffs-appellants and the approval of Resolutions 16 and 45. The rest of the allegations of the complaint were denied. As affirmative defenses, they alleged that (1) plaintiffs had no cause of action since the complaint admitted that they were still rendering service; (2) they have not exhausted all administrative remedies; (3) the abolition of their positions was legal; and (4) not being civil service eligibles, they were merely temporary employees" whose tenure of office could not be more than three (3) months unless re-appointed at every end of the three months period", and they were not reappointed "at the beginning of the present administration".

Accordingly, the case was thereafter set for trial on June 15, 1960 but this was postponed until the next assignment. On August 11, 1960, the date next set for the trial of the case, the court postponed the hearing to give the Provincial Fiscal time to file a motion to dismiss on behalf of defendants-appellees. The motion referred to was subsequently filed and defendants-appellees prayed therein for the dismissal of the complaint on the grounds that: (a) the complaint states no cause of action; (b) the plaintiffs have no legal right to demand for reinstatement; (c) the abolition of their positions by Resolution No. 16, as amended by Resolution No. 45, is legal and authorized by Republic Act No. 2260; and (d) petitioners did not exhaust administrative remedies as required by law, which grounds, as can be readily noted, were mere reiterations of the affirmative defenses in their answer and in effect, all of them amount to only one, i. e., that the complaint stated no cause of action.

Plaintiffs-appellants opposed the motion for dismissal, alleging, that defendants-appellees have already filed their answer and, therefore, the motion was filed out of time; that except for ground (a), the others relied upon are not grounds provided for in the Rules; that there was no merit in defendants-appellants contention that the petition states no cause of action; that they have a right to reinstatement under the Civil Service Law, as the abolition of their positions is illegal because the purpose was to replace them with others chosen by the Provincial Board; and that exhaustion of administrative remedies is not applicable to the case which is "for reinstatement or quo warranto proceedings."

Resolving the motion to dismiss, the trial court issued the questioned order of dismissal sustaining the ground relied upon by respondents that the complaint states no cause of action. His Honor reasoned thus:

"In paragraph 12 of the petition it is alleged that the petitioners have been rendering service continuously from September 16, 1950 (sic) to the present time, indicating thereby that they did not vacate their positions. They do not have, therefore, a right to demand for re-instatement since by their own allegation they are still holding their positions.

"But even conceding that they have vacated their positions, they still have no cause of action. Since they are temporary employees whose employment automatically expires after 3 months if no new appointment is extended to them, they cannot demand reinstatement (Civil Service Law). Appointments which are temporary in character can be terminated at pleasure by the appointing power (Mariano Quitiquit vs: Salvador Villacorta, G. R. No. L-15048, April 29, 1960; Alfredo Cuadra vs. Teofisto Cordova, G. R. No. L-11602, April 21, 1958). Temporary employees may be replaced by others even if the latter are not themselves civil service eligibles (Jose Montero vs. Cuido de Castellanos, G. R. No. L-12694, June 30, 1960).

"It is thus obvious that the petitioners have no cause of action. x x x x x."

In a subsequent order, the trial court denied the motion for reconsideration of the above-mentioned order of dismissal, hence the instant appeal^[2] interposed by petitioners who maintain that the dismissal of the petition is not in accordance with law and jurisprudence.

Appellants now contend that the court below erred in holding that they have no cause of action. They maintain that the dismissed complaint contained sufficient allegations of fact which, if proven, constitute a sufficient cause of action against appellees who have unjustly and illegally terminated their services. We hold there is merit in this contention and, therefore, the order of dismissal appealed from should be set aside.

In order to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint,[3] and the test of the sufficiency of the facts alleged in the complaint, to constitute a cause of action, is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.[4] For this purpose, the motion to dismiss must hypothetically admit the truth of the facts alleged in the complaint.[5]

Examining the allegations of the complaint in question in the light of the foregoing rules, there can be no doubt that appellants are correct. The averments in their complaint show, in synthesis, that they are invoking a right to stay in office on the basis of their allegation that they have been duly appointed thereto and have been holding their positions continuously for more than five (5) years, that they claim a violation of that right by appellees' act of abolishing their positions and terminating their services in bad faith, as shown by their averment that the excuse of economy put forth by appellees was belied by the fact that soon after their separation from the service, five(5) new provincial guards were appointed, that they have consequently suffered injury since they were not being paid and were being disemployed and that on this basis, they would be entitled to the reliefs of retention or reinstatement and payment of back salaries prayed for.

It is obvious that if the above allegations are assumed to be true, appellants have a cause of action stated in their complaint. They have alleged facts showing that appellees have committed acts constituting "a delict or wrong by which one party violates the rights of another causing him loss or injury," hence a cause of action has been alleged by them. (I Moran, Comments on the Rules of Court, p. 91, 1963 ed.) When the ultimate facts alleged in the complaint show that plaintiff has a right and that right has been violated by the defendant, then there is a cause of action. (Community Investment et al. v. Garcia, 88 Phil. 215, 217--218)

Appellees maintain, on the other hand, that the lower court was right in dismissing the action by reason of appellants own allegation in the complaint "that they have been rendering service continuously from February 15, 1960 to the present time" which shows, it is asserted, that they have not vacated their positions and, consequently, cannot demand reinstatement. This contention is untenable. The allegation referred to may indeed appear inconsistent with the demand for reinstatement, but the same should be overlooked in the light of the more prominent and positive averments in the complaint that the services of appellants have been terminated by appellees. (Cf. Worldwide Ins. & Surety Co., Inc. v. Manuel, 98 Phil. 46, 48-49) To warrant the dismissal of a complaint for insufficiency, it should appear that a claim for relief does not exist rather than that a claim has been defectively stated. A complaint should not be dismissed for insufficiency unless it appears to a certainty, from the face of the complaint, that plaintiff would be entitled to no relief under any state of facts which could be proved within the facts alleged therein.[6] Stated otherwise, though the allegations of the complaint are ambiguous, indefinite or uncertain, but, nevertheless, a cause of action can, in any manner, be made out therefrom, and plaintiff would be entitled to recover in any aspect of the facts or any combination of the facts alleged, if they were to be proved, then the motion to dismiss should be denied.[7]

As to appellants' allegation in their complaint that they have been continuously rendering service up to its filing, the same should not be given any legal significance, in view of their other averment that they were duly notified by the Secretary of the Provincial Board that their services were terminated. Appellants may have continued discharging the functions of their office, but the same does not detract from the fact that they had been dismissed and that said dismissal had been implemented, also alleged in the complaint under consideration, by

non-recognition of their official capacity or non-payment of their salaries.[8] Consequently, admitting the truth of both averments, appellants would still be entitled to reinstatement under the circumstances.

Appellants next assail the reasoning of the lower court that conceding they have been disemployed, still they could not demand for reinstatement because, being temporary employees, their employment automatically expired after every three (3) months and had to be given new appointments at the end of each such period, and that, in any event, their tenures were terminable at the pleasure of the appointing power. Appellants maintain, on the other hand, that even if they may be considered as temporary employees, they are still protected under the Civil Service Law by reason of the fact that they have been continuously holding their positions for more than five (5) years.

This position of appellants also deserves approval. There is nothing in the complaint to sustain the view that appellants' appointment had lapsed. From the allegation in their complaint that appellants had been continuously holding their positions for more than five years, it is not legally deducible that from their first appointment as provincial guards, no new appointments had been extended to them during their more than five years of continuous service. To conclude otherwise would be to go beyond the allegations of the complaint and the presumption of regularity which arises therefrom, and to dismiss the complaint under such circumstances is not legally sustainable.

On the contrary, precisely because of the allegation in their complaint that they had been serving for more than five (5) years already, and there being no allegation therein that those who have been appointed to replace them were eligibles, appellants are entitled to the preferential rights under the following provisions of the Civil Service Law:

"Sec. 23 x x x

x x x

"Qualification in an appropriate examination shall be required for appointment to positions in the competitive or classified service in accordance with the civil service rules, except as otherwise provided for in this Act: Provided, That whenever there is a civil service eligible available for appointment, no person who is not such an eligible shall be appointed even in a temporary capacity to any vacant position in the competitive or classified service in the government or in any government-owned or controlled corporation: Provided, further, That non-eligible employees who, upon the approval of this Act, have tendered five years or more of continuous and satisfactory service in classified positions and who meet the other qualifications for appointment to their positions, shall, within one year from the approval of this Act, be given qualifying examinations in which their length of satisfactory service shall be accorded preferred consideration: Provided, further, That those who fail in those examinations as well as those who fail or refuse to take the examinations when offered shall be replaced by eligibles. x x x." [Underscoring Ours]

Thus, under the facts alleged by them, which, as already stated have to be hypothetically assumed to be true by the motion to dismiss, appellants have the right to await the results of the qualifying examinations they alleged in their complaint they had taken on February 27, 1960, which was well within the one year grace period fixed by the above provision, from the approval of the Civil Service Law, Republic Act 2260 on June 19, 1959, and only if they had failed therein, which does not appear in said complaint, that they can be replaced, and more importantly, only by eligibles. Parenthetically, We note that in the motion for reconsideration appellants filed with the lower court on July 26, 1961, they alleged that they had passed the examination, and the interesting sequel thereto is related by them thus:

"The provision of Republic Act 2260 is very clear and petitioners fall squarely under the provision of Section 23 for the reason that they have rendered more than five years satisfactory service. They took the civil service

examination within the required period and luckily they passed said examination. As a matter of fact, on March 19, 1960, the Provincial Governor of Camarines Sur thru the Provincial Warden wrote Pvt. Nicolas Bulala-cao to report for duty, but he refused to return to work because one of the conditions was to first get a clearance from the President of the Liberal Party of his municipality. It is then very plain that the motive in the abolition of petitioners' positions is political, but even if it is not political, still said abolition is illegal in accordance with the executive power, law and decision of the Supreme Court previously cited." (Record on Appeal, pp. 23-24.)

Of course, We are not taking these acts into account because they are not alleged in the complaint. They are quoted only to make it more evident that, in any event, We are on the right track in going along with appellants.

For the same reasons We have just discussed, the holding of His Honor that appellants' temporary appointments are terminable at the pleasure of the appointing power, cannot stand. Insofar as appellants were concerned, the rule invoked by His Honor was subject to the above-quoted Section 23 of the Civil Service Law regarding an appointee who has already served more than five years under a temporary appointment at the time of the approval of the Act. Under the said provision, it is indeed clear that, as already stated, after an employee who had been given a temporary appointment had, for any reason, already served under said appointment, upon the approval of the Civil Service Law, he acquired a right to continue holding his position until three conditions have been complied with, namely, (1) he must have been given a qualifying examination within one year from said approval, (2) he either failed in said examination or failed or refused to take it, and (3) he could be replaced only by one who has the requisite or appropriate civil service eligibility. Without these conditions, he had the right to continue in his position even permanently.

Appellees contend, nevertheless, that the abolition of appellants' positions by respondent Provincial Board is legal, because the same is authorized by the provisions of the Civil Service Law itself which authorizes that the staff of any office, bureau or agency may be reduced whenever it is advisable in the interest of economy. (Section 24 [G], Republic Act 2260) Again, appellees must be overruled. The complaint alleges that the abolition of their positions was made by appellees in bad faith, i. e., not for the bona fide purpose of economy, but for the purpose of replacing appellants, as, in fact, they were replaced by at least five other guards, in violation of their preferential rights to continue holding their positions We have just discussed. Upon such factual basis, the veracity of which We are to assume, the following rulings laid down this Court are squarely applicable:

"There is no statute expressly empowering the Board to abolish the office or positions it has created; however, it is a well-established principle in the law of public administration that the power to establish an office includes the authority to abolish it - unless there are constitutional or statutory rules expressly or impliedly providing otherwise. And the abolition of the office terminates the right of the incumbent to exercise the rights and duties thereof." (Castillo vs. Pajo, etc., et al. G.R. No. L-11262, April 28, 1958)

x x x while abolition of the office does not imply removal of the incumbent, the rule is true only where the abolition is made in good faith; that the right to abolish can not be used to discharge employees in violation of the civil service law nor can it be exercised for personal or political reasons. x x x." (Briones, et al. vs. Osmeña, Jr. etc., et al. G.R. No. L-12536, Sept. 24, 1958)

"This Court has held that it is a well established principle in the law of public administration that the power to establish an office includes the authority to abolish it unless there are constitutional or statutory rules expressly or impliedly providing otherwise. Likewise, this Court has held that the power of a local government to abolish an office that it had created is subject to limitations, that is, that that power must be exercised in good faith, not for personal or political reasons, and not in violation of the civil service law." (Ocampo, et al. vs. Duque, et al., G. R. No. L-23812, April 30, 1966)

"x x x what were abolished were the petitioning employees, not their positions. Their removal was in bad faith.

Courts are duty bound to honor the constitutionally protected security of tenure in observance, not in breach. x x x." (Abanilla, et al. vs. Ticao, et al., G. R. No. L-22271, July 26, 1966)

It is of no moment that the above-quoted precedents involved employees who were dismissed despite the fact that they were eligibles holding permanent positions, for as We have already explained, since the appellants had already more than five years of service to their credit, their right to continue in office is as fully protected under the Civil Service Law as those of eligibles with permanent appointments unless the conditions imposed by Section 23 above-quoted are complied with.

It may not be amiss to add here that in the lower court, appellants questioned the propriety of the motion to dismiss on the ground that appellees had already filed an answer. They have not, however, reiterated the same argument here, realizing perhaps and correctly that the rules expressly provide that the ground of dismissal here-in involved, that the complaint states no cause of action, may be alleged in a latter pleading or even at the trial, so much so that in the latter case, the motion is to be resolved in the light of the evidence which may have been received. (Sec. 2, Rule 9 [Sec. 10, Rule 9 in the Rules of 1940]; *Community Investment & Finance Corporation v. Garcia*, supra.)

Finally, the contention of appellees that appellants have not exhausted available administrative remedies, is as groundless as all their other previously discussed claims. It is settled that the invoked rule of exhaustion of administrative remedies is not a hard and fast rule; it admits of exceptions. Admitting the truth of appellants' allegations in their complaint to the effect that they were separated from the service in patent violation of the Civil Service Law, which contentions We are upholding on the hypothetical assumption that the facts alleged in the complaint are true, immediate recourse to the courts of justice by appellants is not objectionable. One of the well-known exceptions to the rule of exhaustion of administrative remedies is when the controverted act is patently illegal.[9]

In view of all the foregoing, We declare that the court below fell into error in dismissing the complaint of appellants. We find that if the facts alleged in said complaint are true, and they must be assumed to be so, for the purposes of the appellees' motion to dismiss, they constitute a sufficient cause of action entitling appellants to the reliefs prayed for.

WHEREFORE, the orders of the trial court of June 30, 1961 dismissing the complaint of appellants and of August 30, 1961 denying appellants' motion for reconsideration of the first order, both appealed from herein, are hereby set aside, and this case is remanded to the lower court for further proceedings.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

[1] Pedro Pasilaban was allowed by the court to withdraw as petitioner on April 8, 1960.

[2] The clerk of the lower court erroneously transmitted the record of the case to the Court of Appeals which, upon discovery of the mistake, certified the appeal to this Court on December 16, 1963.

[3] *Garcon vs. Redemptorist Fathers*, G.R. No. L-23510, May 30, 1966; *Convets, Inc. vs. NDC*, G.R. No. L-10232, February 28, 1957.

[4] See *Ramos, et al. vs. Condez, et al.*, G.R. No. L-22072, August 30, 1967; *Garcon vs. Redemptorist Fathers*, supra; *Wise & Co. vs. City of Manila*, G.R. No. L-9156, April 29, 1957.

[5] *Garcon vs. Redemptorist Fathers*, supra; *PNB vs. Hipolito*, G.R. No. L-16463, January 30, 1965; *Alquique vs.*

de Leon, G.R. No. L-15059, March 30, 1963; Republic vs. Ramos, G.R. No. L-15484, January 31, 1963.

[6] I Francisco, Revised Rules of Court, p. 685, citing French vs. French Paper Co., 4 Fed. Rules Service, p. 148; See also, I Moran, Rules of Court 1963 ed. 423.

[7] Pangan, et al. vs. The Evening News Publishing Co., Inc. et al., G.R. No. L-13308, December 29, 1960.

[8] Morales, Jr. vs. Patriarca, G.R. No. L-21280, October 21, 1965.

[9] See Mitra vs. Subido, et al., G.R. No. L-21691, Sept. 15, 1967, and cases therein cited.

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