

MITA PARDO DE TAVERA, PLAINTIFF-APPELLANT, VS. PHILIPPINE TUBERCULOSIS SOCIETY, INC., FRANCISCO ORTIGAS, JR., MIGUEL CAÑIZARES, BERNARDO P. PARDO, RALPH NUBLA, MIDPANTAO ADIL, E...

G.R. No. L-48928. February 25, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

On March 23, 1976, plaintiff-appellant Mita Pardo de Tavera filed with the Court of First Instance of Rizal a complaint against the Philippine Tuberculosis Society, Inc. (hereinafter referred to as the Society), Miguel Cañizares, Ralph Nubla, Bernardo Pardo, Enrique Garcia, Midpantao Adil, Alberto Romulo, and the present Board of Directors of the Philippine Tuberculosis Society, Inc.

On April 12, 1976, plaintiff-appellant filed an amended complaint impleading Francisco Ortigas, Jr. as party defendant.

In substance, the complaint alleged that plaintiff is a doctor of Medicine by profession and a recognized specialist in the treatment of tuberculosis, having been in the continuous practice of her profession since 1945; that she is a member of the Board of Directors of the defendant Society, in representation of the Philippine Charity Sweepstakes Office; that she was duly appointed on April 27, 1973 as Executive Secretary of the Society; that on May 29, 1974, the past Board of Directors removed her summarily from her position, the lawful cause of which she was not informed, through the simple expedient of declaring her position vacant; that immediately thereafter, defendant Alberto Romulo was appointed to the position by an affirmative vote of seven directors, with two abstentions and one objection; and that defendants Pardo, Nubla, Garcia and Adil, not being members of defendant Society when they were elevated to the position of members of the Board of Directors, are not qualified to be elected as such and hence, all their acts in said meeting of May 29, 1974 are null and void.

The defendants filed their answer on May 12, 1976, specifically denying that plaintiff was illegally removed from her position as Executive Secretary and averring that under the Code of By-Laws of the Society, said position is held at the pleasure of the Board of Directors and when the pleasure is exercised, it only means that the incumbent has to vacate the same because her term has expired; that defendants Pardo, Nubla, Adil and Garcia were, at the time of their election, members of the defendant Society and qualified to be elected as members of the Board; that assuming that said defendants were not members of defendant Society at the time of their election, the question of qualification of the members of the Board of Directors should have been raised at the time of their election; that assuming that the qualification of members of the Board of Directors can be questioned after their assumption of their offices as directors, such contest cannot be done in a collateral action; that an action to question the qualifications of the Directors must be brought within one year from their election; and that a Director elected without necessary qualification becomes at least a de facto director, whose acts are as valid and binding as a de jure director. Further, defendants disputed the timeliness of the filing of the action stating that an

action to question one's ouster from a corporate office must be filed within one year from said ouster.

On the same date, defendant Adil filed a Motion to Dismiss on the ground that the complaint states no cause of action, or if it does, the same has prescribed. Inasmuch as plaintiff seeks reinstatement, he argued that the complaint is an action for quo warranto and hence, the same should be commenced within one year from May 29, 1974 when the plaintiff was ousted from her position.

Plaintiff filed an Opposition to Motion to Dismiss on May 28, 1976, stating that the complaint is a suit for damages filed under the authority of Section 6, Article II of the present Constitution in relation to Articles 21 and 32(6) of the New Civil Code, and her constitutional right to equal protection of the law, as guaranteed by Section 1, Article IV of the present Constitution.

On June 2, 1976, defendant Adil filed a Reply to Plaintiff's Opposition to Motion to Dismiss arguing that since there is an averment of plaintiff's right to office, and that defendant Romulo is unlawfully in possession thereof, then, it is indeed, a case for quo warranto; and that assuming that it is merely a suit for damages, then, the same is premature, pursuant to Section 16, Rule 66 of the Rules of Court.

On September 3, 1976, the court a quo rendered a decision holding that the present suit being one for quo warranto, it should be filed within one year from plaintiff's ouster from office; that nevertheless, plaintiff was not illegally removed or ousted from her position as Executive Secretary in the Society since plaintiff was holding an appointment at the pleasure of the appointing power and hence her appointment in essence was temporary in nature, terminable at a moment's notice without need to show that the termination was for cause; and that plaintiff's ouster from office may not be challenged on the ground that the acts of defendants Pardo, Adil, Nubla and Garcia are null and void, they being not qualified to be elected members of the Board of Directors because the qualifications of the members of the Board of Directors which removed plaintiff from office may not be the subject of a collateral attack in the present suit for quo warranto affecting title to the office of Executive Secretary.

On October 13, 1976, plaintiff filed a Motion for Reconsideration to which defendants filed an Opposition. On November 25, 1976, the court a quo denied the Motion for Reconsideration.

Dissatisfied with the decision and the order denying the motion for reconsideration, plaintiff filed a Notice of Appeal and an Urgent Motion for Extension of Time to File Record on Appeal, which was granted in an order dated December 15, 1976. However, on December 20, 1976, the court a quo issued an amended order where it qualified the action as principally one for quo warranto and hence, dispensed with the filing of a record on appeal as the original records of the case are required to be elevated to the Court of Appeals.

On August 8, 1978, the Court of Appeals issued a resolution certifying this case to this Court considering that the appeal raises no factual issues and involves only issues of law, as may be gleaned from the following assignments of errors:

- I. The lower court erred in holding that the present case is one for quo warranto and not an action for damages.
- II. In deciding the case, the lower court erred in not upholding the Society's By-Laws, the applicable laws, and the pertinent provisions of the Constitution.
- III. The lower court erred in holding that the plaintiff-appellant is not in the civil service, and therefore, not entitled to the guaranty against removal from office except for cause and after due process of law.

The nature of an action filed in court is determined by the facts alleged in the complaint as constituting the cause of action, and not those averred as a defense in the defendant's answer. The theory adopted by the plaintiff in his complaint is one thing; that by the defendant in his answer another. The purpose of an action or suit and the law to

govern it, including the period of prescription, is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief. (Rone, et al. vs. Claro, et al., L-4472, May 8, 1952, 91 Phil. 250). In *Baguioro vs. Barrios, et al.*, 77 Phil. 120, the Supreme Court held that if the relief demanded is not the proper one which may be granted under the law, it does not characterize or determine the nature of plaintiff's action, and the relief to which plaintiff is entitled based on the facts alleged by him in his complaint, although it is not the relief demanded, is what determines the nature of the action.

While it is true that the complaint questions petitioner's removal from the position of Executive Secretary and seeks her reinstatement thereto, the nature of the suit is not necessarily one of *quo warranto*. The nature of the instant suit is one involving a violation of the rights of the plaintiff under the By-Laws of the Society, the Civil Code and the Constitution, which allegedly renders the individuals responsible therefore, accountable for damages, as may be gleaned from the following allegations in the complaint as constituting the plaintiff's causes of action, to wit:

"20. That, as a consequence of the unfair and malicious removal of plaintiff from her office, which the plaintiff maintains to be contrary to morals, good customs, public policy, the pertinent provisions of said By-Laws of the Society, the laws, and the guaranties of the Constitution, by defendants Cañizares, Ortigas Jr., Pardo, Adil, Nubla and Garcia, the plaintiff suffered not only material damages, but serious damage to her priceless properties, consisting of her honor and reputation, which were maliciously and unlawfully besmirched, thereby entitling her to compensation for material and moral damages, from said defendants, jointly and severally, under Article 21, in relation to Article 32(6) of the New Civil Code;

x x x

"24. That as a consequence of the in-ordinate use and abuse of power by defendants, Cañizares, Ortigas Jr., Pardo, Adil, Nubla and Garcia, in arbitrarily, illegally, and unjustly removing the plaintiff from office, without due process of law, and in denying to her the enjoyment of the guaranty of the Constitution to equal protection of the law, the plaintiff suffered material and moral damages as a result of the debasement of her dignity, both as an individual and as a professional (physician) of good standing, therefore, defendant Cañizares, Ortigas Jr., Pardo, Adil, Nubla and Garcia should be ordered to pay her moral damages, jointly and severally;

x x x

"26. That the acts of the defendants Cañizares, Ortigas Jr., Pardo, Adil, Nubla and Garcia, in illegally removing the plaintiff from her position as Executive Secretary of defendant Society, which plaintiff was then holding under a valid appointment and thereafter, immediately appointing defendant Alberto Romulo to the position, is most unfair, unjust and malicious, because it is contrary to good morals, good customs, public policy, the pertinent provisions of the Code of By-Laws of the defendant Society, the laws and the aforementioned guaranties of the Constitution; that the plaintiff maintains that the said defendants are legally obligated to compensate her, in concept of exemplary damages, in order to restrain persons in authority from committing similar illegal and unconstitutional acts which debase human dignity and inflict injuries to their fellowmen;

x x x

"31. That, as a consequence of the said unjustified refusal of the defendant, pre-sent Board of Directors of the defendant Society, to resolve the complaint of the plaintiff and extend to her the reliefs to which she is entitled under the law and the Constitution, it is respectfully submitted that said defendant Board is under legal obligation to correct the illegal and unconstitutional act of defendants Cañizares, Ortigas Jr., Pardo, Nubla, Adil and Garcia, by restoring the plaintiff to her position as Executive Secretary of the defendant Society, payment of salaries and other benefits, corresponding to the period of her illegal and unconstitutional removal from office."

Further, it must be noted that the action is not only against Alberto Romulo, the person appointed in her stead, but also against the Society and the past and present members of the Board. In fact, Romulo is sued as present occupant of the office and not to hold him accountable for damages because he did not participate in the alleged illegal and unconstitutional removal of plaintiff-appellant. The action is primarily against the Society and the past members of the Board who are responsible for her removal. The present Board of Directors has been impleaded as party defendant for the purpose merely of enabling it to act, "to reinstate the plaintiff to her position as Executive Secretary of the defendant Society" being one of the reliefs prayed for in the prayer of the complaint.

Hence, We hold that where the respondents, except for one, namely, Alberto Romulo, are not actually holding the office in question, the suit could not be one for quo warranto.

Corollarily, the one-year period fixed in Section 16, Rule 66 of the Revised Rules of Court within which a petition for quo warranto should be filed, counted from the date of ouster, does not apply to the case at bar. The action must be brought within four (4) years, in accordance with *Valencia vs. Cebu Portland Cement Co., et al.*, L-13715, December 23, 1959, 106 Phil. 732, a case involving a plain-tiff separated from his employment for alleged unjusti-fiable causes, where this Court held that the action is one for "injury to the rights of the plaintiff, and must be brought within 4 years under Article 1146 of the New Civil Code."

Nonetheless, although the action is not barred by the statute of limitations, We rule that it will not pros-per. Contrary to her claim, petitioner was not illegally removed or ousted from her position as Executive Secretary in violation of the Code of By-Laws of the Society, the New Civil Code and the pertinent provisions of the Cons-titution.

Petitioner claims and the respondents do not dispute that the Executive Secretary is an officer of the Society pursuant to this provision in the Code of By-Laws:

"Section 7.01. Officers of the Society - The executive officers of the Society shall be the President, a Vice-President, a Treasurer, who shall be elected by the Board of Directors, an Executive Secretary, and an Auditor, who shall be appointed by the Board of Directors, all of whom shall exercise the functions, powers and prerogatives generally vested upon such officers, the functions hereinafter set out for their respective offices and such other duties as from time to time may be prescribed by the Board of Directors. One person may hold more than one office except when the functions thereof are incompatible with each other."

It is petitioner's contention that she is subject to removal pursuant to Section 7.04 of the Code of By-Laws which respondents correctly dispute citing Section 7.02 of the same Code. The aforementioned provisions state as follows:

"Section 7.02. - Tenure of Office - All executive officers of the Society except the Executive Secretary and the Auditor, shall be elected by the Board of Directors, for a term of one year, and shall hold office until their successors are elected and have qualified. The Executive Secretary, the Auditor and all other officers and employees of the Society shall hold office at the pleasure of the Board of Directors, unless their term of employment shall have been fixed in their contract of employment.

x x x

"Section 7.04. - Removal of Officers and Employees. - All officers and employees shall be subject to suspension or removal for a sufficient cause at any time by affirmative vote of a majority of all the members of the Board of Directors, except that employees appointed by the President alone or by the other officers alone at the pleasure of the officer appointing him."

It appears from the records, specifically the minutes of the special meeting of the Society on August 3, 1972, that petitioner was designated as Acting Executive Secretary with an honorarium of P200.00 monthly in view of the

application of Dr. Jose Y. Buktaw for leave effective September 1, 1972 for 300 working days. This designation was formalized in Special Order No. 110, s. 1972 wherein it was indicated that: "This designation shall take effect on September 1, 1972 and shall remain until further advice."

In the organizational meeting of the Society on April 25, 1973, the minutes of the meeting reveal that the Chairman mentioned the need of appointing a permanent Executive Secretary and stated that the former Executive Secretary, Dr. Jose Y. Buktaw, tendered his application for optional retirement, and while on terminal leave, Dr. Mita Pardo de Tavera was appointed Acting Executive Secretary. In view thereof, Don Francisco Ortigas, Jr. moved, duly seconded, that Dr. Mita Pardo de Tavera be appointed Executive Secretary of the Philippine Tuberculosis Society, Inc. The motion was unanimously approved.

On April 27, 1973, petitioner was informed in writing of the said appointment, to wit:

"Dr. Mita Pardo de Tavera
Philippine Tuberculosis Society, Inc.
Manila

Madam:

I am pleased to inform you that at the meeting of the Board of Directors held on April 25, 1973, you were appointed Executive Secretary, Philippine Tuberculosis Society, Inc. with such compensation and allowances as are provided for in the Budget of the Society, effective immediately, vice Dr. Jose Y. Buktaw, retired.

Congratulations.

Very truly yours,

For the Board of Directors:

(Sgd) Miguel Cañizares, M.D.
MIGUEL CAÑIZARES, M.D.
President"

Although the minutes of the organizational meeting show that the Chairman mentioned the need of appointing a "permanent" Executive Secretary, such statement alone cannot characterize the appointment of petitioner without a contract of employment definitely fixing her term because of the specific provision of Section 7.02 of the Code of By-Laws that: "The Executive Secretary, the Auditor, and all other officers and employees of the Society shall hold office at the pleasure of the Board of Directors, unless their term of employment shall have been fixed in their contract of employment." Besides the word "permanent" could have been used to distinguish the appointment from "acting capacity".

The absence of a fixed term in the letter addressed to petitioner informing her of her appointment as Executive Secretary is very significant. This could have no other implication than that petitioner held an appointment at the pleasure of the appointing power.

An appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office. The protection afforded by Section 7.04 of the Code of By-Laws on Removal of Officers and Employees, therefore, cannot be claimed by petitioner.

Thus, in the case of *Mojilla vs. Mariño*, 13 SCRA 293, where the appointment contains the following proviso: that

it may be terminated at anytime without any pro-ceedings, at the pleasure of the President of the Philip-pines, this Court held: "It may, therefore, be said that, though not technically a temporary appointment, as this term is used in Section 24(b) of the Civil Service Act of 1959, petitioner's appointment in essence is temporary because of its character that it is terminable at the pleasure of the appointing power. Being temporary in nature, the appointment can be terminated at a moment's notice without need to show cause as required in appoint-ments that belong to the classified service."

In *Paragas vs. Bernal*, 17 SCRA 150, this Court dis-tinguished between removal and expiration of term:

"In the case at bar there has been, however, no removal from office. Pursuant to the charter of Dagupan City, the Chief of Police thereof holds office at the pleasure of the President. Consequently, the term of office of the Chief of Police expires at any time that the President may so declare. This is not removal, inasmuch as the latter entails the ouster of an incumbent before the expiration of his term. In the present case, petitioner's term merely expired upon receipt by him of the communication of respondent Assistant Executive Secretary of the President, dated September 14, 1962."

Petitioner cannot likewise seek relief from the general provisions of the New Civil Code on Human Rela-tions nor from the fundamental principles of the New Constitution on preservation of human dignity. While these provisions present some basic principles that are to be observed for the rightful relationship between human beings and the stability of social order, these are merely guides for human conduct in the absence of specific legal provisions and definite contractual sti-pulations. In the case at bar, the Code of By-Laws of the Society contains a specific provision governing the term of office of petitioner. The same necessarily limits her rights under the New Civil Code and the New Constitution upon acceptance of the appointment.

Moreover, the act of the Board in declaring her position as vacant is not only in accordance with the Code of By-Laws of the Society but also meets the exacting standards of honesty and good faith. The meeting of May 29, 1974, at which petitioner's position was declared vacant, was called specifically to take up the unfinished business of the Reorganizational Meeting of the Board of April 30, 1974. Hence, said act cannot be said to impart a dishonest purpose or some moral obliquity and conscious doing to wrong but rather emanates from the desire of the Board to reorganize itself.

Finally, We find it unnecessary to resolve the third assignment of error. The proscription against removal without just cause and due process of law under the Civil Service Law does not have a bearing on the case at bar for the reason, as We have explained, that there was no removal in her case but merely an expiration of term pursuant to Section 7.02 of the Code of By-Laws. Hence, whether or not the petitioner falls within the protective mantle of the Civil Service Law is immaterial and defi-nitely unnecessary to resolve this case.

WHEREFORE, premises considered, the decision of the lower court holding that petitioner was not illegally removed or ousted from her position as Executive Secretary of the Philippine Tuberculosis Society, Inc., is hereby AFFIRMED.

SO ORDERED.

Teehankee (Chairman), Fernandez, and Plana, JJ., concur.

Makasiar, J., in the result.

Melencio-Herrera, J., no part.

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