

CEBU PORTLAND CEMENT COMPANY, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU), RESPONDENTS.

G.R. No. L-17897. August 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari, taken by the Cebu Portland Cement Company, from an order of the Court of Industrial Relations directing said company to immediately reinstate Dr. Silverio Ceniza to his former position therein, if the same is still available, and, if not, to a similar or equivalent position, with full pay from the time of his separation from the service on November 13, 1954 up to the actual date of his reinstatement.

This is an incident of case No. 241-V (16) of the Court of Industrial Relations, arising from a motion filed by the Philippine Land-Air-Sea Labor Union, hereinafter referred to as the PLASLU, on March 30, 1956, alleging that Dr. Pantaleon Hermosisima and said Dr. Ceniza had been dismissed without just cause from a Cement Plant of the Company in Naga, and praying that they be reinstated, with back pay. The Company maintained, and still maintains, that the employment of Dr. Ceniza was merely temporary in character and for a limited period of time which had already expired.

The pertinent facts are set forth in the order appealed from, in the following language:

"Under date of July 24, 1953, a probational appointment was extended to Dr. Silverio M. Ceniza as Dentist (part time), a classified position of the Cebu Portland Cement Company, with compensation at the rate of P2,400.00 per annum, the appointment to take effect upon assumption of duty. This appointment was authorized as temporary pending receipt of the required medical certificate (Exhs. '13', '20' and '21'). It appears from the record that no medical certificate was ever submitted. However, the record reveals that Dr. Ceniza, at the time of his appointment to the respondent company, was a civil service eligible (Exh. 'T').

"The position of part time dentist occupied by Dr. Ceniza was abolished in the budget and plantilla of the CEPOC for the fiscal year 1954-1955, allegedly for economy reasons (Exhs. '22', '23', '26', '26-A' to '26-E'); hence, Dr. Ceniza was separated on November 13, 1954.

"It can also be gathered from the records that the Cebu Portland Cement Company is a government owned or controlled entity. Hence, it falls under the provisions of Executive Order No. 399, series of 1950, known as the uniform charter for government corporations, wherein it is provided:

'All officers and employees of the corporation shall be subject to the Civil Service Law, rules and regulations, except those whose positions may, upon recommendation of the Board of Directors and the Administrator of Economic Coordination, be declared by the President of the Philippines as policy-determining, primarily confidential or technical in nature. (Exhibit '14', Respondent.)'

* * * * *

"Regarding Dr. Silverio M. Ceniza, let it be stated that before his transfer to the CEPOC, he was a school dentist in the division of City Schools of Cebu. He is a qualified civil service eligible, having passed the civil service examination for school dentist with a rating of 78.16% (Exh. 'T'). This was before he joined the respondent firm. He is also a war veteran, having been a dental surgeon in the Philippine Army in 1942.

"Dr. Ceniza's record of service shows that he was a laboratory technician in the San Lazaro Hospital, Manila, in 1929; a part time dentist in the Cebu Puericulture Center in 1939; a dental surgeon in the Philippine Army in 1942; and part time dentist in the respondent company in 1953 up to the time of his separation on November 13, 1954.

"Upon assumption of service in the respondent CEPOC, Dr. Ceniza was given a physical examination by Medical Director Hermosisima for purposes of the medical certificate required by the civil service rules and regulations. He had a very good record of service in respondent company. In fact, his service therein was excellent, he having obtained an efficiency rating of 94% (Exhs. 'U' and 'U-1').

"The separation of Dr. Silverio M. Ceniza from the service of CEPOC as part time dentist thereof was due to the abolition of his position in the budget for the fiscal year 1954-1955 and for no other cause. He has not committed any crime or irregularity in the performance of his duties. In fact, as already stated before, his record of service was excellent. There was not a single investigation conducted by respondent company so as to justify the separation or dismissal from the service of Dr. Ceniza.

"It is unquestioned that Dr. Ceniza is a civil service eligible. As he was holding a classified position, he is considered a permanent employee. Although his appointment is annotated as 'temporary pending receipt of the required medical certificate', there is no period fixed for his service in the respondent. He immediately submitted himself to a physical examination which was performed by Medical Director Hermosisima. The formulation of the result of the medical examination becomes a ministerial function of the examining officer; and the submission of the same to the Bureau of Civil Service becomes the concern of his superior. If both the examining officer and the appointing officer failed to perform such ministerial function, the said omission should not prejudice the appointee who is Dr. Ceniza in this case thus, we believe that Dr. Ceniza has complied with the obligation to submit to the medical examination required by the Civil Service and should, therefore, be considered a permanent employee for the purpose of this case. Besides, before Dr. Ceniza transferred to the respondent company herein, he was already insured with the GSIS under policy No. 178361 while he was a school dentist in the City Health Department of Cebu City (Exh. 'V-Ceniza'), thereby showing that he was physically and medically examined because one cannot be insured with the GSIS without undergoing a thorough medical or physical examination."

From these facts, said court deduced the following:

"Hence, the separation of Dr. Silverio M. Ceniza, who is a permanent employee, from the service of respondent company, without any investigation or charges filed against him, is a flagrant violation of the rules of Civil Service and negates the policy of the State affording security of tenure to the employees, unless his separation or dismissal is for just cause.

"It is alleged by the CEPOC that the abolition of the position of Dr. Ceniza is for reasons of economy. In view of the financial statements of the respondent company for the years 1954 and 1955, as shown in Case No. 241-V (II), making profits in a substantial amount of P158,852.04 at the end of 1954 and P1,209,710.05 for the year 1955, it cannot be believed that the reasons for abolishing Dr. Ceniza's position was purely economic."

and accordingly ordered the reinstatement of Dr. Ceniza, with back pay, as above stated. The court, however, found the dismissal of Dr. Hermosisima justified. Said order was, on motion for reconsideration filed by the Company, affirmed by a majority of the members of the Court of Industrial Relations sitting en banc. Hence, this

appeal by certiorari taken by the Company, insofar as Dr. Ceniza is concerned, based upon several grounds, only one of which need be considered, in view of the conclusion we have reached in connection therewith.

We refer to petitioner's contention that Dr. Ceniza must be deemed to have abandoned whatever right he had in the Company, he having failed to seek reinstatement until March 30, 1956, or one (1) year and four (4) months after his separation from the service on November 13, 1954. Indeed, in *Gutierrez vs. The Bachrach Motor Co., Inc.*, (105 Phil. 9), we held:

"We now come to the third important question for determination, namely, whether or not plaintiff-appellee has filed the present suit for reinstatement and for backpay within a reasonable time after dismissal. In a long line of decisions, this Tribunal has held that a government official or employee even under the protection of the Constitution and the Civil Service Law that secure him against dismissal without cause, must file his petition for reinstatement within one year from the date of dismissal, otherwise it would be barred by laches. In the present case, Gutierrez was dismissed on July 13, 1951. He filed the present action for reinstatement only on August 28, 1954, that is to say, after more than three years. Although we find this to be neither the time nor the occasion for applying the doctrine laid down with respect to government officials and employees illegally and improperly dismissed, nevertheless, we find his action too late.

'IV. LACHES, STALE DEMANDS, AND LIMITATIONS—

'Section 112. Definitions—

'Laches is such delay in enforcing one's rights as works disadvantage to another.

'Laches in a general sense is the neglect for an unreasonable and Unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting rights during a period of time in which adverse rights have been acquired under circumstances that make it inequitable to displace such adverse rights for the benefit of those who are bound by the delay; such delay in enforcing one's fights as works disadvantage to another, and such neglect to assert a right as, taken in conjunction with lapse of time more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity; an implied waiver arising from knowledge of existing conditions and an acquiescence in them; acquiescence in the assertion of adverse rights and undue delay on complainant's part in asserting his own, to the prejudice of the adverse party.' (30 C.J.S. p. 520-21.)

"The reason for the rule as to laches is clearly explained in the above definition. When an employee or laborer is illegally and unjustifiably separated from the service by his employer, the petition or suit for reinstatement, including backpay, should be instituted within a reasonable time, this to allow, the management to conduct its business and affairs, considering the dismissed employee resorting to court action to vindicate his right to continue in his employment. Within a reasonable time, say, one year, the management may keep the post either vacant by not filling it or cover it with a temporary employee, giving the latter to understand that should the management be later ordered to make the reinstatement, the temporary employee should vacate the post. But this period of uncertainty should not be allowed to continue indefinitely. We find that the more than three year period which plaintiff-appellee had allowed to elapse, without a valid excuse or explanation after his dismissal, is unreasonable. Consequently, assuming that he had a valid right to be reinstated, he slept too long on said right and had forfeited the same." (Italics supplied.)

Considering that Ceniza has not attempted to explain the reason for his delay of one (1) year and four (4) months, in applying for reinstatement, we hold that he must be deemed to have lost, through abandonment, his rights to the position he held in the Company, regardless of the merits of his contention, as regards the alleged lack of justification for his separation from the service. This conclusion is in line, not only with the doctrine laid down in the *Bachrach* case (*supra*), but, also, to the policy adhered to in *Gonzales vs. Rodriguez*, 11 Phil., 354; *De la Cerna vs. Osmena, Jr.*, 105 Phil., 774; *Taborada vs. City of Cebu, et al.*, L-11574 (October 31, 1958); *Quingco vs.*

Rodriguez, L-12144 (September 17, 1958).

Wherefore, the order appealed from, as affirmed by the Court of Industrial Relations sitting en banc, is hereby reversed, insofar as Dr. Silverio M. Ceniza is concerned, and his petition for reinstatement with back wages, accordingly, dismissed, without costs. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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