

OSMUNDO G. RAMA, PETITIONER, VS. COURT OF APPEALS, JOSE ABALA, MELCHOR ABANGAN, EUTIQUIO ALEGRADO, EMIGDIO BLANCO, ISABELO CABUENAS, CESAR CAMILLO, JOSE CENIZA, ANDRES CAMPANA, ...*G.R. No. L-44484. March 16, 1987*

Ponente: ALAMPAY, J.

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During the incumbency of Rene Espina as provincial governor of Cebu, Osmundo G. Rama as vice-governor and Pablo P. Garcia, Reynaldo M. Mendoza and Valeriano S. Carillo as members of the Sangguniang Panlalawigan, said officials adopted Resolution No. 990 which appropriated funds "for the maintenance and repair of provincial roads and bridges and for the operation and maintenance of the office of the provincial engineer and for other purposes". (L-44591 Rollo, pp. 34-37).

In said resolution, the provincial government of Cebu under the aforementioned officials, declared its policy "to mechanize the maintenance and repair of all roads and bridges of the province (including provincial roads and bridges receiving national aid 'JJ'), to economize in the expenditure of its Road and Bridge Fund for the maintenance and repair of provincial roads and bridges receiving national aid 'JJ' and to adopt a more comprehensive, systematic, efficient, progressive and orderly operation and maintenance of the Office of the Provincial Engineer".

To implement said policy, the provincial board resolved to abolish around thirty positions^[1] the salaries of which were paid from the 'JJ' Road and Bridge Fund thus doing away with the caminero (pick-shovel-wheelbarrow) system. Consequently, around 200 employees of the province were eased out of their respective jobs and, to implement the mechanization program in the maintenance of roads and bridges, the provincial government purchased heavy equipment worth P4,000,000.00. However, contrary to its declared policy to economize, the provincial administration later on hired around one thousand new employees, renovated the office of the provincial engineer and provided the latter with a Mercedes-Benz car (Decision in CA-G.R. No. 49328-R, L-44591 Rollo, p. 37).

Aggrieved by these turn of events, the employees whose positions were abolished filed separate petitions for mandamus, damages and attorney's fees aimed at the annulment of Resolution No. 990, their reinstatement and the recovery of damages. The aforementioned provincial officials who, together with the provincial auditor, provincial treasurer, provincial engineer and the province of Cebu, were named respondents in said action, were sued "both in their official and personal" capacities as a result of their alleged "unjust, oppressive, illegal and malicious" acts (Petition, Record in Civil Case No. R-10704, p. 3).

In Civil Case No. R-10704, the Court of First Instance of Cebu declared Resolution No. 990 null and void and ordered the respondent officials to re-create the positions abolished, to provide funds therefore, to reinstate the 56 petitioners headed by Jose Abala, and to pay them back salaries. For "lack of legal and factual basis", no damages

were awarded to petitioners and no pronouncement as to attorney's fees were made as the petitioners had agreed to pay their lawyers 30% of whatever amount they would receive as back salaries (L-44591 Rollo, pp. 33-34).

All the parties appealed to the Court of Appeals (CA-G.R. No. 49328-R). Eventually, said appellate court, through its First Division, affirmed the lower court's decision with the modification that respondents were ordered to pay jointly and severally in their "individual and personal capacity" P1,000.00 moral damages to each of the petitioners considering that the case involved a quasi-delict (L-44591 Rollo, p. 54).

From that decision, Osmundo G. Rama, interposed an appeal to this Court (G.R. No. L-44484). Espina, Garcia, Mendiola and Carillo then filed their own petition for review (G.R. No. L-44591). But before Espina, et al. could file said petition, the province of Cebu and its Sangguniang Panlalawigan filed their own petition for review questioning that portion of the appellate court's decision which ordered the reinstatement with back salaries of the dismissed employees. Said petition, which was docketed as G.R. No. L-44572, was dismissed by this Court for lack of merit in the resolution of October 25, 1976. Entry of judgment was made on November 24, 1976.

Meanwhile, dismissed employees Froilan Frondoso and Jeremias Luna, who also had filed their own petition for mandamus in the Court of First Instance of Cebu, elevated their case to the Court of Appeals (CA-G.R. No. SP-04649). In its decision, the Court of Appeals' Ninth Division followed the ruling of its First Division in CA-G.R. No. 48328-R, held that the wrong committed by the respondent public officials was a quasi-delict, and ordered the reinstatement with back salaries of Frondoso and Luna and the payment in solidum by respondent public officials of P1,000.00 each to Frondoso and Luna as moral damages plus P1,000.00 as attorney's fees. With the exception of Rama, the respondent public officials appealed to this Court (G.R. No. L-44842). Subsequently, the Cebu Assistant Provincial Attorney, representing the Province of Cebu and its Sangguniang Panlalawigan, also appealed to this Court from that decision (G.R. No. L-44894).

On March 28, 1977, this Court resolved to consolidate G.R. Nos. L-44484, L-44842, L-44591 and L-44894 considering that said cases involve the same issues and factual background (L-44591 Rollo, p. 344).

Thereafter, Frondoso and Luna filed a motion to dismiss L-44894 and L-44842. They alleged that as the petition in L-44572 had been dismissed on October 25, 1976, said two cases should likewise be dismissed because they, together with the private respondents in L-44572 who, like them, were also permanent appointees to their respective positions, "were separated from the service on the same date by the same petitioners" (L-44894 Rollo, p. 140) and therefore, the petitions in L-44894 and L-44842 were barred by the rule of stare decisis.

The motion to dismiss, however, was noted in the resolution of February 17, 1978, it appearing that said two cases had already been submitted for decision (L-44894 Rollo, p. 148; L-44842 Rollo, p. 139). Frondoso and Luna filed another motion to dismiss L-44894 but after the petitioners had filed their comment thereon, said motion to dismiss was also noted in the resolution of February 22, 1981 (L-44894 Rollo, p. 186).

We find, however, that Frondoso's and Luna's contention that L-44894 should be dismissed is meritorious. The issues raised in L-44894 and L-44572 are the same. In fact, the prayer in the petition in L-44894 is virtually a verbatim reiteration of that in L-44572. The allegation of petitioner province of Cebu and its Sangguniang Panlalawigan that the question of jurisdiction was not raised in L-44572 (L-44894 Rollo, p. 150) cannot successfully save L-44894 from dismissal. In their petition, the province of Cebu and its Sangguniang Panlalawigan merely argued that the Court of Appeals did not acquire jurisdiction over the case, considering that Frondoso and Luna's appeal was perfected after the expiration of the reglementary period and that their brief was filed one month too late.

However, the trend of the rulings of this Court in matters pertaining to the timeliness of the perfection of an

appeal is to afford every party-litigant amplest opportunity to present their case "for the proper and just determination of his cause, freed from the constraints of technicalities." (Rodriguez vs. Court of Appeals, L-37522, November 28, 1975, 68 SCRA 262). Applying the above ruling to this case, the Court of Appeals may not, therefore, be faulted for assuming jurisdiction over the appeal of Frondoso and Luna.

Hence, with respect to L-44894, this Court is bound by the dismissal of L-44572 and so L-44894 should likewise be dismissed, as it is hereby dismissed.

Proceeding now to resolve the issue, common to L-44484, L-44591 and L-44842, which is whether or not Espina, Rama, Garcia, Mendiola and Carillo are personally liable for damages for adopting a resolution which abolished positions to the detriment of the occupants thereof, this Court has held that, at least, in principle, a public officer by virtue of his office alone, is not immune from damages in his personal capacity arising from illegal acts done in bad faith. A different rule would sanction the use of public office as a tool of oppression (Tabuena vs. Court of Appeals, L-16290, October 31, 1961, 3 SCRA 413).

Thus, in Correa vs. CFI of Bulacan, L-46096, July 30, 1979, 92 SCRA 312, We held personally liable a mayor who illegally dismissed policemen even if he had relinquished his position. Therein, We held that:

"A public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his duty, is not protected by his office and is personally liable therefor like any private individual (Palma vs. Graciano, 99 Phil. 72, 74; Carreon vs. Province of Pampanga, 99 Phil. 808). This principle of personal liability has been applied to cases where a public officer removes another officer or discharges an employee wrongfully, the reported cases saying that by reason of non-compliance with the requirements of law in respect to removal from office, the officials were acting outside of their official authority (Stiles vs. Lowell, 233 Mass. 174, 123 NE 615, 4 ALR 1365, cited in 63 Am. Jur. 2d. 770)."

We hold that the petitioners in the instant three cases are personally liable for damages because of their precipitate dismissal of provincial employees through an ostensibly legal means.

The Court of Appeals, whose factual findings are binding on this Court, found that the provincial employees concerned were "eased out because of their party affiliation". i.e., they belonged to the Liberal Party whose presidential candidate then was Sergio Osmena, Jr. (CA Decision in G.R. No. 49328-R, p. 6, L-44591 Rollo, p. 38). Such act of the petitioners reflected their malicious intent to do away with the followers of the rival political party so as to accommodate their own proteges who, it turned out, even outnumbered the dismissed employees.

Indeed, municipal officers are liable for damages if they act maliciously or wantonly, and if the work which they perform is done rather to injure an individual than to discharge a public duty (56 Am. Jur. 2d 334, citing Yealy V. Fink, 43 Pa 212). As we have held in Vda. de Laig vs. Court of Appeals, L-26882, April 5, 1978, 82 SCRA 294, 307-308, a public officer is civilly liable for failure to observe honesty and good faith in the performance of their duties as public officers or for wilfully or negligently causing damage to another (Article 20, Civil Code) or for wilfully causing loss or injury to another in a manner that is contrary to morals, good customs and/or public policy (Article 21, New Civil Code).

Neither can petitioners shield themselves from liability by invoking the ruling in the cases of Carino vs. Agricultural Credit and Cooperative Financing Administration, L-23966, May 22, 1969, 28 SCRA 268. In those cases, the erring public officials were sued in their official capacities whereas in the instant cases, petitioners were specifically sued in their personal capacities.

For their part, the dismissed employees are entitled to damages because they have suffered a special and peculiar injury from the wrongful act of which they complain (Mechem, A Treatise on the Law of Public Offices and Officers, p. 391). It is an undeniable fact that the dismissed employees who were holding such positions as

foremen, watchmen and drivers, suffered the uncertainties of the unemployed when they were plucked out of their positions. That not all of them testified as to the extent of damages they sustained on account of their separation from their government jobs, cannot be used as a defense by the petitioners. Suffice it to state that considering the positions they were holding, the dismissed employees concerned belong to a low-salaried group, who, if deprived of wages would generally incur considerable economic hardships.

Justice demands that they be recompensed for the predicament they were placed in, apart from the back salaries which they are entitled to as a matter of right. We are inclined to agree that the amount of P1,000.00 damages granted to each of them by the Court of Appeals was fixed by that court judiciously and is a reasonable sum (Article 2216, Civil Code).

Petitioner Rama's protestations that when he eventually became the governor of Cebu, he reinstated most of the dismissed employees through provincial board Resolution No. 392 (L-44484 Rollo, p. 16) cannot erase the fact that he had a hand in the adoption of Resolution No. 990. His subsequent benevolent act cannot sufficiently make up for the damage suffered by the dismissed employees during their period of unemployment.

Apropos the practice of victorious politicians to remove government employees who did not support them in their campaign for office, this Court has said: "There are altogether too many cases of this nature, wherein local elective officials, upon assumption to office, wield their new-found power indiscriminately by replacing employees with their own proteges regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts." (Nemanzo vs. Sabillano, L-20977, September 7, 1968, 25 SCRA 1).

WHEREFORE, in L-44894, the petition for review on certiorari is hereby dismissed for lack of merit. In L-44484, L-44591 and L-44842, the decision of the First and Ninth Divisions of the Court of Appeals are hereby AFFIRMED with costs against the petitioners.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

[1] Highway maintenance, general foreman, highway maintenance capataces, construction helpers, bridge foreman, field checkers, materials checkers, supplies checkers, road-right-of-way agent, chief watchman, watchmen, camp watchmen, security guards, checker-timekeepers, typists, timekeeper-mechanics, autoshop foreman, automotive foreman, automotive servicemen, latheman-mechanics, latheman-operators, painters, electricians, blacksmiths, automotive mechanics, senior mechanics, mechanics, assistant mechanics, driver-mechanics and mechanic-drivers.

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