

DAMASO ALIPIO, ET AL., PETITIONERS AND APPELLANTS, VS. JOSE V. RODRIGUEZ, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-17336. December 26, 1963*

Ponente: MAKALINTAL, J.

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Petitioners have taken this appeal from the decision of the Court of First Instance of Cebu dismissing their petition for mandamus to compel respondents or their successors in office to reinstate them to their positions in the office of Osmeña Waterworks System, Cebu City; and to pay their back salaries from the date of their separation, plus moral damages and costs. The Court of Appeals, to which the case was originally elevated, certified it to this Court for the reason that only questions of law are involved.

The essential facts are not disputed. Appellants were laborers in the Osmeña Waterworks System receiving daily wages. Most of them were appointed on January 1, 1951; two others on April 23, 1951; and the rest on July 1, 1951. Their positions had been created by the Municipal Board of Cebu City in connection with the reforestation project being undertaken at the site of Buhisan Dam and their appointments were noted by the Commissioner of Civil Service "as temporary pending report from the Government Service Insurance System as to the appointee's insurability," or "as temporary pending report from the Government Service Insurance System as to the appointee's physical and medical examination."

On July 28, 1952 appellee Candelario Almendras, Supervising Watermaster of the Osmeña Waterworks System, advised petitioners in writing that their services would terminate on the 31st day of said month by reason of the depletion of the waterworks funds, their item in the plantilla not being "urgently necessary for the present time." As stated by the trial court in its decision, their services were no longer needed because the Buhisan dam reservations had been sufficiently reforested. After July 31, 1952 the City Auditor and City Treasurer of Cebu City stopped paying the salaries of appellants.

On April 8, 1952 the city municipal board approved the budget of the Osmeña Waterworks System for the fiscal year 1952-1953 (Budget Ordinance No. 159). Although signed by the Acting Mayor only on April 15, 1953, the ordinance provided in its section 2 that the budget was effective as of July 1, 1952. In that budget the positions of appellants, which appeared under the item "Reforestation of Buhisan Watershed" in the one for the previous fiscal year, were eliminated. Nor were they recreated in subsequent budgets.

The court a quo dismissed the petition for mandamus on the grounds: (1) that the separation of appellants was due to the abolition of their positions, which was within the power and authority of the municipal board of Cebu City, it having created those positions in the first place; (2) that the appointments extended to appellants were temporary in character; (3) that appellants were guilty of laches in filing their petition in the instant case.

That the municipal board of Cebu City had the power to abolish the positions of appellants is not disputed. A recognized exception to the valid exercise of such power is when the abolition of an office is done in bad faith, as when the purpose is to discharge the incumbent in violation of the civil service law. There is no pre-tension here

that bad faith motivated the suppression of appellants' items in the budget. Not only were the funds to cover their salaries insufficient, but the reforestation work for which they had been employed was practically finished. The fact that the annual budget of Osmeña Waterworks System for the fiscal year 1952-53 was approved only in April 1933, after appellants were notified of their separation, is of no material importance as far as the instant petition for reinstatement is concerned. The budget ordinance expressly provided that it would take effect retroactively, that is, as of July 1, 1952, thereby ratifying the action previously taken by respondent Almendras in the premises. Whether appellants' appointments were permanent or temporary in nature has no bearing on this case, since the question does not involve removal from positions which continued to exist but rather the validity of the abolition of those positions themselves.

On the question of laches, it appears that appellants filed the instant petition only on August 17, 1955, more than three years after they were separated from the service. The delay is indeed inexcusable. The reason given by appellants for such delay is that they tried to pursue some administrative remedy before coming to court. There is, however, no precise administrative remedy which appellants availed of. Nor, for that matter, do they point to any that is available under the law. All they did was to ask a Senator to intercede for them with the Secretary of Public Works and Communications. It was an extra-legal remedy, and even that was done only on January 29, 1955, two years and five months after appellants' separation. In the case of *Unabia vs. City Mayor of Cebu, et al.*, G.R. No. L-8759 (May 25, 1956), we held that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office." The defense of laches in the present case was therefore correctly sustained by the lower court.

The judgment appealed from is affirmed, without pronouncement as to costs.

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

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