

BRAULIO STO. DOMINGO, GAUDENCIO MAPILE, PEDRO G. TUASON, PON-CIANO RIVERA, SIMON B. REYES, JR., PETITIONERS, VS. HON. JUDGE WALFRIDO DE LOS ANGELES AND EDUARDO SAN PASCUAL, RESP...

G.R. No. L-30135. February 21, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

During periods pertinent to this case, petitioner Braulio Sto. Domingo was the Municipal Mayor of San Juan, Rizal. Petitioners Gaudencio Mapile, Pedro G. Tuason and Ponciano Rivera were the members of the Local Board of Investigators of the municipality, a Board created under section 15 of the Police Act of 1966. Petitioner Simeon B. REYES, Jr. was a police Captain of the San Juan Police Department, while respondent Eduardo SAN PASCUAL was the Chief of Police.

The antecedental facts disclosed that petitioner REYES was the Chief of the Service Bureau of the San Juan Police Department. For alleged repeated disobedience of REYES, respondent SAN PASCUAL, as Chief of Police, obtained authority from petitioner Mayor Sto. Domingo to reassign REYES to the administrative division. The Mayor later reassigned the latter to his office. Thereafter, upon learning that REYES still had a key to the door of the office where the police records were located, SAN PASCUAL issued a memorandum order for REYES to return the key. REYES allegedly refused to acknowledge receipt of the order and to return the key. When asked to explain, REYES stated that he did not have a key belonging to the police department. SAN PASCUAL found the explanation unsatisfactory, believing that even if the key had been ordered by REYES at his personal expense, it should have been surrendered. SAN PASCUAL then suspended REYES for ten days for refusal to acknowledge the memorandum order, and ten days for refusal to return the key, in the exercise of his disciplinary jurisdiction pursuant to section 15 of Republic Act No. 4864.[1]

REYES thereafter filed a sworn complaint with the Police Commission (POLCOM) on September 13, 1968[2] and a sworn statement on October 3, 1968[3] charging SAN PASCUAL with Oppression and Grave Misconduct. On October 12, 1968, the POLCOM referred the complaint to the Board of Investigators of San Juan for appropriate action at the same time advising SAN PASCUAL of the referral.[4] On October 21, 1968, the Board recommended to the Mayor the suspension of SAN PASCUAL[5] in view of the gravity of the charges and considering that the complainant (REYES) was under the supervision of SAN PASCUAL. However, on October 22, 1968, the Chairman of the Board recalled said recommendation in order to give SAN PASCUAL a chance to answer the charge.[6] SAN PASCUAL has alleged that the Mayor did not withdraw the order suspending him.

On October 24, 1968, SAN PASCUAL filed a Complaint with Preliminary Injunction before the Court of First Instance of Rizal, Quezon City, Branch IV (Civil Case No. Q-12528), presided by respondent Judge de los Angeles against Mayor Sto. Domingo, the members of the Board of Investigators of San Juan, the Chairman and Commissioner of the POLCOM, and REYES. SAN PASCUAL alleged that the complaint filed against him

before the POLCOM was capricious and without factual and legal basis and prayed for damages as well as for a Writ of Preliminary Injunction to enjoin the oppressive exercise of authority by defendants there-in and to restrain them from proceeding with the administrative investigation, and/or preventively suspending SAN PASCUAL.

Additionally, SAN PASCUAL raised the question of legality and constitutionality of the procedure laid down in Republic Act No. 4864[7] and the creation of the Police Commission thereunder, which he claimed was in conflict with the Decentralization Law, or Republic Act No. 5185, and contended that the latter law should prevail.

On November 8, 1968, respondent Judge granted the Writ prayed for

"enjoining the respondents (petitioners herein) and the office of which they act, the Police Commission and Local Board of Investigators of San Juan, Rizal, and any and all of the defendants in proceeding or taking any action on the aforesaid complaint or issuing an order based on the said complaint or any provisions of the Police Act of 1966 like that of suspending the plaintiff from his position as police chief of San Juan, Rizal, upon filing of a bond in the sum of P1,000.00"

A Motion for Reconsideration filed by petitioners (defendants below) was denied in the Order of December 24, 1968.

Hence, this Petition for Certiorari and Prohibition filed on February 1, 1969 by petitioners-officials, alleging grave abuse of discretion on the part of respondent Judge in issuing the Writ of Preliminary Injunction, and praying that he be prohibited from further hearing the case below.

On February 7, 1969, this Court restrained respondent Judge "from enforcing and carrying out the Order of November 8, 1968 and from further hearing Civil Case No. Q-12528".[8] The effect of this Restraining Order was the suspension of SAN PASCUAL.[9] A Motion to Lift Restraining Order filed by him and opposed by petitioners, was apparently left unresolved by us.

Respondent Judge predicated his injunctive Order on the theory that "if the Board of Investigators will be allowed to proceed with the investigation and the injunction will not be issued, most probably the plaintiff Eduardo San Pascual may be investigated by an illegal board or under an illegal procedure which is a basic constitutional right of the accused." And that "if the Police Act of 1966 would be declared unconstitutional in some aspects the investigation which if proceeded to would amount to nothing but would only place the said plaintiff Eduardo San Pascual in a humiliating and embarrassing situation." [10] Petitioners contend, on the other hand, that Police Chief SAN PASCUAL has not shown a clear legal right which should be enforced by injunctive relief; that injunction does not lie to prevent embarrassment and humiliation to an individual; that the issuance of the Writ of Injunction was prejudicial to public interest considering the nature of the administrative proceedings against SAN PASCUAL and the fact that a public office is not "property" but is a public trust; that the mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined; that the due process clause does not apply in cases of preventive suspension; that the constitutionality of the Police Act of 1966 must be presumed and that it is not in conflict with Republic Act No. 5185 or the Decentralization Law.

We find merit in this Petition filed by the Municipal Mayor, the members of the Board of Investigators of San Juan, Rizal, and REYES. The Police Act of 1966[11] was enacted "to achieve and attain a higher degree of efficiency in the organization, and operation of local police agencies with the end in view that peace and order may be maintained more effectively and the laws enforced with more impartiality." A declared objective of that Act is "to place the local police service on a professional level." [12]

To carry out the purposes of the Act, a Police Commission was therein created under the Office of the President

composed of a Chairman and two other members.[13]

Sec. 14 of the Act provides for the removal and suspension of members of the police force or agency, thus:

"Members of the local police agency shall not be suspended or removed except upon written complaint filed under oath with the Board of Investigators herein provided for misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularities in the performance of their duties, and violation of law."

The proviso on the Board of Investigators is contained in section 15, and reads:

"SEC. 15. Board of Investigators. - In every local police agency there shall be a Board of Investigators. Charges against any member of the city and/or municipal police agency shall be investigated by a Board of Investigators of three members, composed of the city or municipal treasurer, as chairman, a representative of the Provincial Commander, and a councilor, elected by a majority of the city or municipal council concerned, as members.

Copy of the charges shall be furnished the respondent by the chairman of the Board of Investigators within five days from the date of filing of said charges, and the respondent shall answer within five days from receipt thereof. The Board of Investigators shall conduct its investigation in public within five days from receipt of respondent's answer to the charges or from the expiration of respondent's period to answer, whichever is earlier and unless for good cause shown, the investigation shall be finished within thirty days thereafter, and the Board shall submit the records of the investigation, its findings and recommendations to the Police Commission within thirty days after the termination of the investigation. The decision of the Police Commission shall be final and must be rendered within seventy-five days from the time of receipt of the findings of the Board. Disciplinary jurisdiction of offenses involving suspension of not more than ten days or forfeiture of not more than fifteen days' pay is vested in the chief of the police agency concerned whose decision shall be final."

The preventive suspension of any member of the police force charged administratively is likewise provided for.

"SEC. 16. Suspension of Members of the Police Force of Agency. - When an administrative charge is filed under oath against any member of the local police agency, the city mayor or municipal mayor, as the case may be, may suspend the respondent: Provided, That the charge involves disloyalty to the government, dishonesty, oppression, grave misconduct, serious irregularities, or serious neglect of duty, if there are strong reasons to believe that the respondent is probably guilty thereof which would warrant his suspension or removal from the service. The preventive suspension shall not be more than sixty days, after which the respondent shall be reinstated to the service without prejudice to the continuation of the case until its final disposition: Provided, however, That if the delay in the disposition of the case is due to the fault, negligence, or petition of the respondent, the period of the delay shall not be counted in computing the period of suspension herein provided. The respondent shall be entitled to his salary for the period of suspension upon exoneration."

Applied to the case at bar, we find that the procedure prescribed by the Police Act had been complied with. On September 13, 1968, REYES had filed a written complaint (mere "statements" according to SAN PASCUAL) under oath with the POLCOM against Police Chief SAN PASCUAL, for Oppression and Grave Misconduct. This was followed by his Sworn Statement on October 3, 1968 where he was asked by the Investigation Division of the POLCOM to elaborate on the charges he had filed against SAN PASCUAL. POLCOM indorsed the REYES complaint to the Board of Investigators of San Juan, Rizal, on October 12, 1968. An order of suspension was then recommended by the Board to be issued by the Mayor, although that recommendation was recalled by the Board Chairman on October 22, 1968 to enable SAN PASCUAL to answer the complaint.[14]

And even if, as alleged, petitioner Mayor had refused to lift his suspension order despite the recall of the recommendation made by the Board of Investigators, he would have been well within his authority to maintain the

suspension under section 16 of the Police Act (quoted verbatim above), the Police Chief having been charged with Oppression and Grave Mis-conduct, offenses specifically included in the said section, and the Mayor presumably having had strong reasons to believe that SAN PASCUAL was probably guilty thereof.

Upon these facts, we find in-existent any oppressive exercise of authority by petitioners-officials, which could constitute the basis for the injunctive relief that was granted by respondent Judge. Contrary to the criterion that he followed, the mere fact that a statute is alleged to be unconstitutional or invalid, does not of itself entitle a litigant to have the same enjoined.[15]

In providing as it does for preventive suspension of a policeman charged administratively, the Police Act does not thereby, as contended by SAN PASCUAL, violate the due process clause. Thus, in *Nera vs. Garcia, et al.*, [16] this Court held:

"Preventive suspension is a preliminary step in an administrative investigation. It is not a punishment. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed from office. This is the penalty. For this reason, there is nothing improper in suspending an officer before the charges against him are heard and before he is given an opportunity to prove his innocence."

The Constitution itself allows suspension for cause as provided by law and the law provides that an employee may be suspended pending an investigation, or by way of penalty.[17] Preventive suspension, however, cannot be indefinite, otherwise, it would be equivalent to penalty without finding of guilt.[18] In the case of members of the police force, preventive suspension for not more than sixty days is specifically provided for by section 16 of the Police Act.

As early as *Cornejo vs. Gabriel, et al.*, 41 Phil. 188, 195 (1920), this Court, in the words of Mr. Justice George A. Malcolm, had also ruled:

"The suspension of an officer pending his trial for misconduct, so as to tie his hands for the time being, seems to be universally accepted as fair, and often necessary. x x x Notice and hearing are not prerequisites to suspension unless required by statute and therefore suspension without such notice does not deprive the officer of property without due process of law. Nor is a suspension wanting in due process of law or a denial of the equal protection of the laws because the evidence against the officer is not produced and he is not given an opportunity to confront his accusers and cross-examine the witnesses." [19]

x x x x x x x x

"The holding of the court here was that it is within the power of the legislature to authorize the temporary suspension of a public officer during the pendency of valid proceedings to remove such officer and as an incident to such proceedings, notwithstanding the fact that the constitution has given power to remove such officer only for cause and after a hearing. Notice and hearing are not prerequisites to the suspension of a public officer under a statute which does not provide for such notice and hearing." [20]

The reason given is that a public office is not "property" within the meaning of the due process clause.

"Again, for this petition to come under the due process of law prohibition, it would be necessary to consider an office as 'property.' It is, however, well settled in the United States, that a public office is not property within the sense of the constitutional guaranties of due process of law, but is a public trust or agency. In the case of *Taylor vs. Beckham* (1899), 178 U.S., 548, Mr. Chief Justice Fuller said that: 'Decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such.' The basic idea of government in the Philippine Islands, as in the United States, is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a proprietary or contractual

right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents." [21]

Of more recent vintage is the ruling of this Court in *Manuel vs. Villena* [22] as follows:

"x x x Section 1838 of the Revised Administrative Code does not require that the investigation be in the nature of a court trial. In deciding administrative questions, administrative bodies or officials generally enjoy wide discretion. Technical rules of procedure are not strictly enforced, and due process of law in the strict judicial sense is not indispensable. It is sufficient that the substantive due process requirement of fairness and reasonableness be observed.

"x x x Absence of previous notice is not of itself a substantial defect; what the law abhors is the lack of opportunity to be heard."

Respondent SAN PASCUAL seeks shelter in the case of *Libarnes vs. Executive Secretary*, [23] which held that "the Chief of Police of Zamboanga City is a member of our civil service system. [24] Hence, he cannot be removed or suspended except for cause, as provided by law and after due process." [25] While the principle is valid, that case, however, is not in point because it involved the termination of services of said Chief of Police by the designation of another in his place and constituted an illegal removal. The instant case, on the other hand, refers to an administrative complaint under oath, duly instituted, where the Police Chief was preventively suspended considering the gravity of the charges against him. Moreover, the constitutional provision on removal or suspension except for cause as provided by law gives in to the fundamental postulate that a public office is a public trust. [26]

Similarly, while we uphold the ruling in the case of *Abaya vs. Villegas* [27] that "a civil service employee should be heard before he is condemned", the facts of that case do not support SAN PASCUAL's posture either because that case involved the cancellation of an employee's civil service eligibility where there was no investigation before he was eased out of the service, which is completely different from the factual situation at bar. SAN PASCUAL will have full opportunity to be heard at the administrative investigation to be conducted by the Board of Investigators (if this has not been conducted as yet) and it is only after the latter shall have submitted its findings and recommendations to the POLCOM that this body will render its decision.

We come now to the specific consideration of the issue of alleged conflict between the Police Act of 1966 [28] and the Decentralization Act of 1967. [29] The Decentralization Act was enacted to grant further autonomous powers to local governments. Section 4 thereof specifically provided, inter alia:

"x x x x x

"The suspension, removal, transfer and other personnel action on the heads of offices and their other employees in provinces, cities and municipalities shall be subject to the provisions of civil service law, rules and regulations."

"x x x x x "

SAN PASCUAL then pinpoints section 32 of the Civil Service Act of 1952 [30] providing that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process."

We perceive no inconsistency nor irreconcilability between the two Acts. The provisions of the Police Act of 1966 prescribing a specific procedure for the removal and suspension of members of the local police forces, creating local Boards of Investigators whose findings and recommendations are to be forwarded to the Police Commission, and providing that the decision of said Commission shall be final, [31] have not been repealed nor

modified by the Decentralization Act of 1967. The presumption is always in favor of the constitutionality of a statute and not against it.[32] Repeals by implication are not favored and when there are two acts on the same subject, effect should be given to both if possible.[33]

Another basic principle of statutory construction mandates that general legislation gives way to special legislation on the same subject, and generally must be so interpreted as to embrace only cases in which the special provisions are not applicable.[34] Further, it has been held:

"A special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and application, unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law." [35]

The Police Act of 1966 providing for the procedure of removal and suspension of policeman is the earlier special law. The Decentralization Act of 1967 is the later general law that provides for the procedure and suspension of all civil service employees in the Government. Consequently, the fact that one is special and the other is general creates a presumption that the special (the Police Act) is to be considered as remaining an exception to the general (the Decentralization Act), one as a general law of the land, the other as the law of a particular case.[36]

In fact, this Court has already explicitly ruled:

"The special laws covering specific situations of policemen and employees of the City of Manila, Republic Acts 557 and 409, subsist side-by-side with Republic Act 2260, and are not impliedly repealed by the latter which is a general law." [37]

Republic Act No. 557 was the prior enactment to the Police Act of 1966 and was repealed by the latter. The ruling in the aforesaid case, therefore, should apply with as much force and vigor to the present suit.

It should likewise be observed that the system for the suspension or removal of policeman has invariably been provided for in special provisions or special laws, namely, section 2272, Revised Administrative Code, followed by RA No. 557, and now the Police Act of 1966. They have always been separate and apart from the procedure for civil service personnel, in general, provided for in section 684, etc. of the Revised Administrative Code, and the Civil Service Act of 1959. The two modes of suspension or removal have always been preserved.

As then Secretary of Justice Claudio Teehankee, now Associate Justice of this Court, had occasion to opine in his Memorandum for the President, dated December 22, 1967, and with which we fully agree:

"In the final analysis, the Decentralization Act does not vest any specific power in the Commissioner of Civil Service in addition to what has been granted by the Civil Service Law. For it is essentially a mere restatement of the rule that the suspension or removal of civil service employees in general 'shall be subject to the provisions of civil service law, rules and regulations.' Under that law, by the terms of Section 16 (i), the power of the Civil Service Commission 'to have final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service...' is qualified by the phrase 'except as otherwise provided by law.' As regards members of local police forces, there is such a statute, the Police Act of 1966 which confers such disciplinary power in the Police Commission.

WHEREFORE, the Orders dated November 8, 1968 and December 24, 1968, respectively, issued by respondent Judge are nullified and set aside and the Restraining Order heretofore issued converted into a permanent Writ of Injunction.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

Teehankee, (Chairman), J., took no part.

[1] Police Act of 1966.

[2] p. 139, Rollo.

[3] pp. 128-136, *ibid.*

[4] p. 137, *ibid.*

[5] p. 143, *ibid.*

[6] p. 71, *ibid.*

[7] The Police Act of 1966.

[8] p. 78, Rollo.

[9] p. 5, Answer of respondent San Pascual, p. 99, *ibid.*

[10] Order, Nov. 8, 1968, pp. 29-31, *ibid.*

[11] RA No. 4864.

[12] Sec. 2, RA No. 4864.

[13] Sec. 3, *ibid.*

[14] Annex B, Opposition by San Pascual, p. 71, Rollo.

[15] *Co Chiong vs. Dinglasan*, 79 Phil. 122 (1947); *J. M. Tuason & Co., Inc. vs. Court of Appeals*, 3 SCRA 696, 1961.

[16] 106 Phil. 1031 (1960).

[17] Sections 694 and 695, Revised Administrative Code; *Austria vs. Auditor General*, 19 SCRA 79 (1964).

[18] *Garcia vs. Executive Secretary*, 6 SCRA 1 (1962).

[19] Citing *State vs. Megaarden* (85 Minn. 41).

[20] Citing from *Griner vs. Thomas* (1907), 101 Texas, 36; 16 Ann. Cas., 944).

[21] *Cornejo vs. Gabriel*, *supra*, p. 194.

[22] 37 SCRA 745 (1974).

[23] 9 SCRA 261 (1963).

[24] Section 5, Republic Act No. 2260.

[25] Section 32, Republic Act No. 2260.

[26] *Orencia vs. Enrile*, 55 SCRA 580 (1974).

[27] 18 SCRA 1034 (1966).

[28] RA No. 4864.

[29] RA No. 5185.

[30] RA No. 2260.

[31] Sections 14, 15, and 16.

[32] Govt. vs. Municipality of Binangonan, 34 Phil. 518 (1916); Victoriano vs. Elizalde Rope Workers Union, et al., 59 SCRA 54 (1974); Vera vs. Arca, 28 SCRA 351 (1969); Morfe vs. Mutuc, 22 SCRA 424 (1968).

[33] Neri vs. Akutin, 74 Phil. 185 (1943).

[34] U.S. vs. Lapp, 244 F 377; Camacho vs. CIR, 80 Phil. 848 (1948).

[35] Phil. Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35 (1952).

[36] Butuan Sawmill, Inc., vs. City of Butuan, 16 SCRA 755 (1966), quoting Manila Railroad Co. v. Rafferty, 40 Phil. 224.

[37] Villegas vs. Subido, 14 SCRA 872 (1965).

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