

THE DIRECTOR OF THE BUREAU OF PRINTING AND THE EXECUTIVE SECRETARY, PETITIONERS, VS. HON. ALBERTO J. FRANCISCO, AS PRESIDING JUDGE OF BRANCH IX OF THE COURT OF FIRST INSTANCE OF...

G.R. No. L-31337. December 20, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this original action, the Court grants the writs of prohibition and certiorari and annuls three challenged orders of respondent court requiring the deduction and deposit in court by petitioner director of the bureau of printing of 20% of the collectible overtime differentials of its employees on the fundamental ground that funds in the hands of public officers, although they may be due government employees, are not liable to the creditors of such employees and form part and retain their character of public funds, which cannot be seized by the process of attachment, garnishment or execution.

Under date of January 15, 1969, respondents at bar as former and incumbent employees of the Bureau of Printing filed with respondent court of first instance of Manila a petition for certiorari and mandamus against herein petitioners officials as respondents[1] for the recovery of overtime differentials from July 1, 1965 under section 1656 of the Revised Administrative Code.[2]

Respondents averred that they were being paid their overtime pay computed on a flat basis of P200. 00 per month instead of on the basis of their actual salaries which exceeded such flat basis of P200. 00 per month. They further alleged that they were sufficiently numerous and representative to prosecute the interest of all their fellow employees similarly situated, but at the same time appended to their petition a power of attorney executed by a total of 114 employees (including themselves) naming petitioner Pacifico Advincula as their attorney-in-fact to prosecute their claim and undertaking to pay him an amount equivalent to 20% of the overtime differential as may be collected and "authorizing all persons concerned to effect deduction of the fees of the said attorney-in-fact in the event of payment of this claim." [3]

Petitioners as respondents filed their answer in due course, averring inter alia, that the P200. 00 flat monthly rate used as basis for computing the overtime pay covered a prior period not covered by the petition (from April 1, 1962 to June 30, 1965) when the bureau's precarious financial condition did not permit payment of overtime on the basis of actual salaries; and that the employees' remedy was an administrative appeal to the President for inclusion of their over-time differentials in the bureau's annual budget. Petitioners further pleaded that the action was actually one against the State and could not be entertained by the court without State's consent, the proper recourse being to present respondents' money claims with the Auditor General under Commonwealth Act No. 327.

Petitioners also pleaded that at any rate the action was barred by res judicata by virtue of a previous judgment dated December 12, 1968 rendered by the same court of first instance of Manila in a previous mandamus case

filed by the employees' union against petitioner Director of the Bureau of Printing wherein he was ordered "to compute the overtime pay differentials due members of petitioner union from July 1, 1965 to the present and to include the same in the budget estimate for 1969-70." [4]

On September 27, 1969, petitioner director filed a manifestation with respondent court informing it that the budget commissioner had approved his representations and included the allotment in the fiscal year 1969-1970 budget (Republic Act No. 6050, p. 1266) for the payment of the overtime differentials (estimated at P900, 000. 00) from July 1, 1965 to June 30, 1968, which would immediately be paid to all employees of the bureau (excluding petitioner Pacifico Advincula who is not an employee) upon the President's approval and release of the allotted funds, and that the case would thereby become moot. [5]

Petitioner director further informed respondent court that the majority of the bureau's 900 regular employees (as against only 103 employees who authorized Pacifico Advincula to represent them) had written to him in a letter petition dated June 30, 1969 that they did not authorize any of herein respondents to represent them either through judicial or administrative action relative to their claim for overtime differentials and that they opposed the deduction of any amount from their respective collectible overtime differentials.

As against this backdrop and pending hearing on the merits of the case below, respondent court issued its three challenged orders of October 7, 1969 and October 13, 1969 and of November 4, 1969.

The first questioned order of October 7, 1969, granted respondents' counsels' "Urgent Motion to Withhold Amount Corresponding to Attorneys' Fee" as filed on October 6, 1969, in advance of the hearing thereof set on October 11, 1969, [6] and without considering the written opposition filed on October 10, 1969 by 72 of the named signatories who had executed the very power of attorney invoked by Pacifico Advincula and who now disclaimed the very action filed below stating that it was filed "by Pacifico Advincula without (their) knowledge and consent . . . and in violation of the trust reposed in him." They charged petitioner Pacifico Advincula with evident bad faith" stating that they had properly informed him that the over-time differentials were to be included by petitioner director in the 1969-1970 budget, and that he (Advincula) assured them that "he will forego the filing of any action in their behalf." [7] Respondent court thereby "ordered the respondent director of the Bureau of Printing to deduct and withhold an amount equivalent to twenty (20%) per cent of whatever sum may be due and payable to each and all of the herein petitioners [respondents herein] in the concept of overtime compensation as and for attorney's fees." [8]

The second questioned order of October 13, 1969 granted a so-called urgent ex-parte motion of respondent to amend the first order of October 7, 1969 so as to make the 20% deduction ordered therein applicable not only to the named petitioners but to "all, other employees of the bureau" whether or not they had authorized Pacifico Advincula to represent them. Respondent court without hearing, thereby pronounced the suit to be a "class suit" and ordered "(T)he Director of the Bureau of Printing, the cashier and disbursing officer accounting officer and the auditor of said Bureau, x x outright to deduct and withhold an amount equivalent to 20% of whatever sum may be due and payable to each and every petitioner herein, as well as all other employees of said Bureau who may receive over-time and differential pay, including all those who are benefited or stand to benefit in this action, as and for attorneys' fees, and to deposit the said amount with this Court immediately after payment to the payees." [9]

Petitioners forthwith moved respondent court on October 17, 1969 to reconsider its orders, invoking inter alia the immunity of public funds from the process of seizure or garnishment to satisfy the claims of creditors against public officers and employees who have salaries or other pay due and payable to them from the government.

On October 20, 1969, Attys. David Advincula, Jr. and Jose M. Yacat as counsels for respondents (petitioners

below) (apparently to counter petitioners' objection that Pacifico Advincula is not even a lawyer entitled to charge a 20% contingent fee as "attorney-in-fact" "in the prosecution of this claim, legal or otherwise" under the power of attorney executed in his favor by the named employees in the case below),[10] gave notice of their attorneys' "charging lien against the petitioners . . . in an amount equivalent to 20% (on contingent basis) of whatever sum each petitioner may be able to collect as overtime pay differential." [11] They submitted a letter-contract dated April 22, 1969 addressed by Pacifico Advincula to them whereby he conveyed to both of them "all (his) rights, interests and privileges under the (said) power of attorney" on condition they would reimburse him for expenses incurred, present and future, "particularly in securing Congressional authority for the funds needed." [12]

Respondent court per its order of October 29, 1969 deferred action thereon "in order to preserve the status quo between the parties" until final adjudication of the case since it "would involve the determination of whether the claim for attorneys' fees in an amount equivalent to 20% is justified or not" and set the case for pre-trial on October 31, 1969.

Upon another urgent ex-parte motion for compliance filed by respondents through counsel dated November 3, 1969, stating that "the payees have all been paid their overtime differentials by the respondent director on October 9, 10 and 11, 1969" [13] (i. e. before issuance of its second order of October 13, 1969, requiring withholding of 20% from the overtime differentials paid to all employees rather than to the named petitioners only) respondent court issued its third questioned order of November 4, 1969 ordering petitioner director "to immediately deposit with this Court the total amount corresponding to 20% as attorney's fees which had been deducted and withheld by him pursuant to the orders of October 7 and 13, 1969." [14]

In its order of November 24, 1969, respondent court denied reconsideration of this last order of November 4, 1969 and ordered "immediate compliance" with its order of deposit. Hence, the petition at bar.

The Court required respondents to answer and issued its writ of preliminary injunction of December 17, 1969, restraining respondent court from enforcing and or implementing its three questioned orders of October 7 and 13, 1969 and November 4, 1969.

The case was heard on February 4, 1970, with petitioners submitting in due course their memorandum in lieu of oral argument and respondents submitting their case on the basis of the pleadings of record. [15]

Discounting the side-contentions of the parties which are of no decisive bearing, the Court, grants the writs of certiorari and prohibition as prayed for, on the fundamental ground that funds in the hands of public officers, although they may be due government employees, are not liable to the creditors of such employees and form part and retain their character of public funds, which cannot be seized by the process of attachment, garnishment or execution. Respondent court manifestly acted with grave abuse of discretion and beyond its jurisdiction in issuing its three questioned orders ordering the deduction and deposit in court by petitioner director of the bureau of printing of 20% of the overtime differentials due to its employees, amounting to approximately P180,000.00.

As early as the 1922 case of *Director of Commerce and Industry vs. Concepcion* [16] the Court, through Justice George A. Malcolm, in setting aside a writ of attachment secured by a creditor against the accrued leave salary of a coastguard service officer, held that the salary due from the Government to a public officer or employee cannot, by garnishment, be seized before being paid to him and appropriated to the payment of his judgment debts. The Court laid down the rule of immunity of public funds from the process of seizure or garnishment in this wise: "A rule which has never been seriously questioned is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is

prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it."

The Court stressed therein that so long as money remains in the hands of a public disbursing officer, the money retains its character of public funds as if it had not been drawn from the government treasury. The Court further pinpointed the lower court's error in considering it essential that the Code of Civil Procedure (now Rules of Court) should expressly exempt or exclude from execution salaries of government officials or employees and under-scored the principle governing such cases as "one lying at the foundation of orderly government and requiring no express state-ment in legislation."

This established principle that government funds may not be levied upon to satisfy money judgments even in cases where the State has consented to be sued (such as in expropriation proceedings) has been uniformly and consistently upheld by the Court. As restated in *Commissioner of Public Highways vs. San Diego*[17], "(T)he universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy."

In the recent case of *Virata vs. Aquino*,[18] a majority of the Court held further that even an order of attachment against goods in customs custody for non-payment of customs dues and liabilities is "void and of no effect", ruling that "(T)he placing of the goods under attachment as a result of an action commenced by a third party against the consignee, while the liabilities due on the said goods to the Government have not been fully settled and while they remain in the custody of customs authorities, undermine the efficacy of our customs laws and is void."

In the case at bar, respondents' right even to institute the action below is challenged by petitioners on a score of grounds, inter alia, the State's immunity from suit, the lack of cause of action on the part of respondents since their action became moot with the inclusion of the overtime differentials in the 1969-1970 budget and the President's eventual approval of the release of the funds for payment and the action below is not even one for collection of attorneys' fees, the lack of authority on the part of respondents to file the case below, since most of the 100 or so signatories of the power of attorney in favor of respondent Pacifico Advincula repudiated his action of filing the case, and the opposition of the majority of the bureau's 900 regular employees against any deduction from their collectible overtime differentials since they had not authorized any of herein respondents to represent them whether judicially or administratively.

All such grounds constitute serious grounds against respondents' very right and personality to file the petition below as well as supplemental grounds for setting aside respondent court's challenged orders, although it is not necessary to directly rule upon them here in view of the result reached. Since the cause of action originally sued upon by respondents as petitioners below, the payment of overtime differentials, has become moot, as petitioners officials as respondents below do not contest the same and in fact petitioner director has paid the same from the allotted budget funds as released by the President, the only issue left below, if any, appears to be whether respondents' above-named attorneys have a valid claim to payment of attorneys' fees, and if so, to what extent, whether against those petitioners below alone who have named Pacifico Advincula as their attorney-in-fact or against all employees indiscriminately regardless of their never having had anything to do with Advincula.

Upon remand of this case, respondent court should recall its order of October 29, 1969 deferring action until final adjudication of the case and rule upon this question squarely to pave the way for the dismissal of the suit below if so warranted, without preju-dice to respondents' attorneys and Pacifico Advincula filing a new and entirely separate action against those respondents-signatories alone (to the exclusion of petitioners-officials) who executed the power of attorney and whom they deem liable to them for payment of their 20% contingent fee.

It need only be stressed, with reference to respondents' contention that petitioner director's "sudden decision to pay now, after adopting a lukewarm or lackadaisical attitude in this matter in the beginning, evokes some misgivings" and "betrays a subtle move 'to beat the court to the punch', so to speak" and to "cause the non-payment of attorneys' fees"[19] begs the question. Prescind-ing from the fact that their very right to charge and collect attorneys' fees is seriously challenged, as above stated, not to mention that there is not even any judgment obtained by them against which to claim such fees since the case has not even been heard, it is obvious that the prohibition against the seizure or garnishment of government funds to satisfy money judgments applies equally, if not more so, to mere contingent claims for alleged attorneys' fees.

Furthermore, respondent court's challenged orders, in ordering the deduction and deposit in court by petitioner director of 20% of the overtime differentials due the employees of the bureau of printing, prematurely and without factual basis adjudged in effect the very fact yet to be established, as to whether respondent Pacifico Advincula and the attorneys engaged by him have just and valid claim against all bureau of printing employees for 20% of their collectible overtime differentials.

ACCORDINGLY, the writs of prohibition and certiorari are granted as prayed for. Res-pondent court's orders of October 7 and 13, 1969 and of November 4, 1969 are hereby set aside and annulled, and the writ of preliminary injunction heretofore granted against their enforcement and implementation is hereby made permanent. Respondent court is directed to conduct further proceedings for the prompt resolution of the prejudicial questions as to whether there remains any justiciable controversy between the parties that calls for adjudication or whether the case below has become moot insofar as petitioners officials are concerned, so as to call for dismissal of the action against them in line with the observations above made in the opinion of the Court.[20] No pronouncement as to costs.

Makalintal, C.J., Ruiz Castro, Barredo,[*] Esguerra, and Muñoz Palma, JJ., concur.

[1] Docketed in. Civil Case No. 75365 of the Manila court of first instance.

[2] "Section 1656, Extra compensation for overtime work. —Technical employees of the Bureau of Printing and other employees whose services are required to facilitate the accomplishment of technical work shall be paid, for over-time work on regular work days, twenty per centum more, and on holidays one hundred per centum more than they receive for the same amount of ordinary day labor."

[3] Annex A of Annex A, petition.

[4] Bureau of Printing Craftsman Ass'n. et al, vs. Director, Bureau of Printing, docketed as Civil Case No. 74778 of the Manila court of first instance.

[5] Rollo, p. 78; Annex G, petition.

[6] Rollo, p. 109.

[7] Rollo, pp. 78, 117.

[8] Annex L, petition.

[9] Annex M. petition, emphasis supplied.

[10] Power of Attorney in favor of Pacifico Advincula, Rollo, p. 34.

[11] Rollo, p. 34.

[12] Rollo, p. 116.

[13] Annex R, petition, emphasis supplied.

[14] Annex S, petition.

[15] Rollo, p. 220.

[16] 43 Phil, 384, 386 (1922); emphasis supplied.

[17] 31 SCRA 616, 625 (1970) and cases cited.

[18] L-35027, September 10, 1973, per Castro, J.

[19] Rollo, p. 106.

[20] See page 8 hereof.

[*] Designated as member of the First Division for determination of the case at bar, under Special Order No. 5 dated December 17, 1973, in lieu of Justice Felix V. Makasiar, who is disqualified to take part herein.

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