

**JUAN R. ISBERTO, PLAINTIFF-APPELLEE, VS. ANTONIO V. RAQUIZA,
AS SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS,
ALEJANDRO D. DELENA, AS DIRECTOR OF PUBLIC WORKS AND
ADRIANO L. BAN...**

G.R. No. L-35001. September 25, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Certified to Us by the Court of Appeals for review on question of law is the decision of the Court of First Instance of Pangasinan in Civil Case No. 14740-11, ordering the defendants to pay the back salaries of the plaintiff.

On February 1, 1957, plaintiff was appointed as a Building Foreman in the Office of the District Engineer of Pangasinan in a permanent capacity with a salary of P2,040.00 per annum. On December 23, 1957, he fell ill and was hospitalized. His illness later developed into a tuberculosis of the bone (Pott's disease). In view of his affliction, he was constrained to apply for a leave of absence which was granted, at first with pay, but later without pay. It took almost four years for the plaintiff to recover from his illness.

On June 16, 1961, plaintiff-appellee sent a letter to the District Engineer requesting his return to his position, attaching therewith a doctor's certificate attesting to his physical fitness. The District Engineer denied plaintiffs request for the reason that the position formerly occupied by him has already been declared vacant and has later been filled up with the appointment of Raymundo Alegre on January 18, 1960 with a salary of P2,676.00 per annum. In the meantime that plaintiff-appellee could not get back his old position, he tried to look for another. Luckily he was able to secure an appointment to another position or item with the same salary of P1,676.00 per annum on November 24, 1964.

Sometime in 1969, plaintiff-appellee thought of filing and in fact has filed a suit to recover his back salaries in the amount of PI 1,271.58, covering the period from June 20, 1961, when he requested to be returned to his old position up to November 23, 1964, the day when he was appointed to another, on the ground that he was unjustly or unlawfully removed therefrom during the aforementioned period.

At the pre-trial conference, the parties agreed on the following facts (Pre-trial Order dated June 24, 1969):

1. That this is an action for a sum of money corresponding to the salary of the plaintiff on June 20, 1965 to November 23, 1964;
2. That plaintiff has been employed in the office of the District Engineer of Pangasinan from February 1, 1957 to December 23 when plaintiff asked for leave of absence;
3. The from December 24, 1957, to June 20, 1961 plaintiff was not rendering any service to the government because he was sick;
4. That plaintiff claims to have recovered on June 20, 1961, and asked for reinstatement but was not reinstated

until about November 24, 1964 when he was reinstated as Construction Foreman;

5. That from June 20, 1961 to November 23, 1964, the period during which plaintiff asked for payment of salaries in this case, said plaintiff was not rendering any service to the government;

6. That the only question to be resolved in this case is the legal question as to whether the plaintiff, who has not rendered any service to the Government from June 20, 1961 to November 23, 1964, is entitled to the emolument enumerated in Par. 8 of the complaint.

Based on the pleadings and on the stipulation of facts agreed upon during the pre-trial conference, the lower court rendered judgment on October 30, 1969, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered, ordering the defendants to pay the plaintiff the sum of P11,271.58, with interest at the legal rate from the time of the filing of the complaint on April 16, 1969, and the additional amount of P500.00 as attorney's fees. With cost."

From said decision defendants have taken an appeal to the Court of Appeals pressing the following errors of the lower court:

I

"IN NOT DISMISSING THE CASE FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION OR SUIT.

II

"IN RENDERING JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST DEFENDANTS ORDERING THE LATTER TO PAY BACK SALARIES, INTERESTS PLUS ATTORNEY'S FEES."

On February 28, 1970, the Court of Appeals certified the case to this Court pursuant to Section 17, in relation to Section 31, Republic Act 296, as amended.

It is a well-known principle in our jurisdiction that a against an officer of the government by a private citizen would result in a charge against or financial liability must be regarded-as a suit against the government itself, and cannot prosper or be entertained by the court except with the consent of said government.[1]

Similarly, in the case before Us, the complaint filed by plaintiff-appellee against the defendants-appellants District Engineer, Director of Public Works and Secretary of Public Works, for the recovery of his back salaries is one that would result in a charge against or financial liability against the Government itself and therefore cannot prosper or be entertained by the courts except with its consent. The defendants-appellants in declaring that the plaintiff-appellee has abandoned his position and was automatically separated from the service, granting that such was illegal, acted officially in the name of the government. Any judgment against them would mean a charge against the government.

The consent of the government alluded to in the foregoing doctrines is found in Commonwealth Act No. 327 which allows the presentation of cases involving settlement of accounts or claims with the Auditor General who under the law shall act and decide them within sixty (60) days, exclusive of Sundays and holidays after presentation.[2]

The claim of the plaintiff-appellee for recovery of back salaries undoubtedly involves a settlement of accounts or claim against the government and therefore should have been filed with the Auditor General first pursuant to Commonwealth Act No. 327, instead of taking it in court. Since the plaintiff-appellee failed to do so, the lower court did not have jurisdiction entertain his claim. In one case³ the Supreme Court ruled:

"The Courts of First Instance no longer have original jurisdiction to act on such claims,. . . since exclusive original jurisdiction, under Article XI of the Constitution and the implementing Act, Commonwealth Act 327 is vested in the Auditor General, and appellate jurisdiction is vested in the President in cases of accountable officers, and in the Supreme Court in cases of private persons and entities upon proper and timely petitions for review.

The Court has so indicated in a number of cases that claimants have to prosecute their money claims against the government Commonwealth Act 327, x x x and that the conditions provide in Commonwealth Act 327 for filing of money claims against the government must be strictly observed."

Granting for the sake of argument that the lower court has jurisdiction over the case, We are not prepared to sustain plaintiff-appellee's claim for back salaries. It is admitted that plaintiff after recovering from his illness requested the defendants-appellants to reinstate him to his old position but the latter refused alleging that plaintiff-appellee has abandoned his post and was already considered automatically separated from the service pursuant to the Revised Civil Service Rules.

Was plaintiff legally separated from the service? Pursuant to Rule XVI, Section 33 of the Revised Civil Service Rules:

"Under no circumstances shall leave without pay be granted for more than one year. If an employee who is on leave without pay for any reason fails to return to duty at the expiration of one year from the effective date of such leave, he shall be considered automatically separated from the service; Provided, That he shall, within a reasonable time before the expiration of his one year leave of absence without pay, be notified in writing of the expiration thereof with a warning that if he fails to report for duty on said date he will be dropped from the service."

It is admitted that plaintiff-appellee went on leave (with prior in application and permission) from December 23, 1957 to April 30, 1958, or a total of 129 days, 29 days of which were with pay (December 23 to January 28, 1958). From January 29, 1958 to April 30, 1958, he was already on leave without pay. From May 1, 1958 plaintiff-appellee was AWOL (absence without official leave). Even granting that he was granted an extended leave absence without pay from January 29, 1958, his one-year leave of absence without pay would have ended on January 29, 1959. After said date he was considered automatically separated from the service. It will be noted that plaintiff-appellee asked defendants-appellants to reinstate him only on June 20, 1961 which is almost one year and six months after his supposed one-year leave of absence without pay, was to have expired.

But it may be argued that plaintiff-appellee was not ever given a written notice within a reasonable period before the date of the expiration of his leave of absence without pay, warning him that if he fails to report for duty on the date his leave of absence without pay expires, he will be dropped from the service. The proviso in Section 33 of Rule XVI of the Revised Civil Service Rules that the employee concerned should be notified in writing, within a reasonable period before the expiration of his one-year leave of absence without pay, of the expiration thereof, otherwise he will be automatically dropped from the service, is to remind the officer concerned of his impending separation from the service so he could prepare for such an eventuality. In the case before Us, however, the plaintiff-appellee did not even have the proper leave of absence without pay because his leave of absence without pay was only up to April 30, 1958 and he did not extend it. He went AWOL (absence without official leave) beginning May 1, 1958 and applied for reinstatement only on June 20, 1961. The failure of plaintiff-appellee to claim for reinstatement for a period of two years and a half shows from January 29, 1959 when he was deemed automatically separated from the service is a clear case of abandonment. He ought to have known that he was automatically separated from the service on January 29, 1959. His ignorance of the provision of Rule XVI, Section 33 of the Revised Civil Service Rules, providing for automatic separation from the service of an employer

who fails to return to work after the expiration of his leave of absence without pay, did not excuse him. On June 16, 1961, or two years and a half from date of his automatic separation, all that he did was to write a letter to the defendants requesting his return to his position did not file any action in court to contest the legality of separation. Again when he learned that someone was appointed to his position, he did not take any steps to contest the title of the latter to the office. In one case this Court held:

"A person claiming rights to a position in the civil service must institute the proper proceedings to assert his right within the period of one year from the date of separation, otherwise he will be considered as having abandoned his office, or even acquiesced or consented to his removal and, therefore, not entitled to bring action for his reinstatement. The rationale of this doctrine is that the Government must be immediately informed or advised if any person claiming to be entitled to an office or a position in the civil service as agent another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one for the person actually holding the office, although illegally, and another for one not actually rendering service although entitled to do so." [4]

Consequently, both on grounds of abandonment and by specific provision of the Revised Civil Service Rules [5] plaintiff-appellee has lost his title to the office. The weight of authorities in the United States is to the effect that where provision is made for compensation for a public office, the right to the compensation is incident to the office or to the right or title thereto.⁶ Since plaintiff-appellee has no more title to his former office after he was automatically separated therefrom on January 29, 1959 he can no longer recover salary after said date.

IN VIEW OF THE FOREGOING, the judgment appealed from is hereby reversed and set aside, and another one entered, dismissing the complaint of plaintiff-appellee. Without pronouncement as to costs.

SO ORDERED.

Teehankee, Makasiar and Muñoz Palma, JJ., concur.

Castro (Chairman), J., in the result.

Esguerra, J., on leave.

[1] *Syquia vs. Almeda Lopez*, 84 Phil. 312; *Lim vs. Nelson*, 87 Phil. 328; *Marvel Building Corporation vs. Phil War Damage Commission*, 85 Phil. 27; *Parreño vs. Me Granevy*, 92 Phil. 791; *Johnson vs. Turner*, 94 Phil. 87.

[2] "Section 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation" (Commonwealth Act No. 327).

[3] *Carabao, Inc. vs. Agricultural Productivity Commission, et al.*, G.R. No. L-29304, Scpl. 30, 1970.

[4] *Madrid vs. Auditor General and Republic of the Philippines*, 108 Phil. 579.

[5] Section 33, Rule XVI.

[6] 67 C.J.S., p. 320; see also 63 Am. Jur., p. 845.

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