

**VICENTE BENDANILLO, SR., PETITIONER-APPELLANT, VS. THE
PROVINCIAL GOVERNOR, THE PROVINCIAL BOARD, THE
PROVINCIAL TREASURER AND THE PROVINCIAL AUDITOR,
RESPONDENTS-APPELLEES.**

G.R. No. L-28614. January 17, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

This appeal by petitioner Vicente Bendanillo, Sr. from a lower court decision giving effect to an abolition of a position in the Office of the Provincial Treasurer of Cebu and thus denying him the reinstatement sought, would dispute the legality of such action its Provincial Board,[1] one of the respondents. There being no evidence that such elimination of the item was tainted by bad faith and the authoritative precedents recognizing such competence on the part of a provincial board, the answer cannot be in doubt. We sustain the lower court.

The relevant and undisputed facts as well as the controlling legal proposition in this action for mandamus against the provincial governor and the other respondents for the reinstatement of petitioner to his position of special deputy were set forth in the ably-written decision of Judge Santiago O. Tañada thus: "It is true that petitioner was reinstated, in fact he was extended an appointment as Senior Deputy in the Office of the Provincial Treasurer of Cebu Province by the Provincial Governor on September 1, 1964, which appointment was approved by the Commission of Civil Service under Sec. 24 (c) of R. A. No. 2260. As the appointment was approved under Sec. 24 (c) of R.A. No. 2260, his appointment was temporary in nature. But on July 30, 1965, the Honorable Provincial Board by virtue of Resolution No. 870 * * * disapproved the creation or incorporation of that position. Resolution No. 870, series of 1965 states that: 'Resolved that the request of Mr. Vicente Bendanillo, Sr. for the creation or incorporation of the position of Senior Deputy in the Office of the Provincial Treasurer in the Annual General Fund Budget for the Fiscal Year 1965-1966 be and is hereby disapproved in view of the opinion of the Provincial Treasurer that he is not in favor of creating new position.' 'The exercise of the power to legislate in regard to fixing the number and salaries of officials and employees has a recognized exception, namely, that the abolition of an office or position must be in good faith and not characterized by fraud and improper motives. It cannot be resorted to as a means to remove the incumbents in violation of the civil service law.' (Urgelio, et al. vs. Osmefta, et al., L-20370, Nov. 1963). In the instant case it was not shown that the abolition was made in bad faith, as evidence of good faith on the part of respondents, the Provincial Board in its Resolution No. 352, series of 1964 * * * abolished 33 positions 'to effect salary savings and revert the same to public improvements,' and in its Resolution No. 892, series of 1965, * * * it abolished all positions that may be vacated occasioned by death, resignation, retirement, either compulsory or optional and by termination of the service for cause except the offices under the Provincial Treasurer 'in conformity with the policy of reducing too many offices in the service of the provincial government of Cebu.' Neither was it shown that the enactment of Resolution No. 870, series of 1965, was resorted to as a means to remove the incumbent in violation of the civil service law because the appointment extended him approved by the Commission of Civil Service was under Sec. 24 (c) of Republic Act

2260, and his appointment, therefore, is merely temporary and such he is removable at the pleasure of the appointing power. When that Resolution No. 870, series of 1965, was enacted by the Provincial Board, the Provincial Governor who appointed the petitioner was present and presided the meeting of the board and nowhere in said resolution appears that the Provincial Governor opposed said resolution. And the basis of the resolution was 'the opinion of the Provincial Treasurer that he is not in favor of creating new position.'"[2]

Even a perusal, casual in character, of the above-quoted portion of the decision complained of would suffice to demonstrate its soundness. The futility of the appeal, as already mentioned, is thus apparent.

1. The law on abolition of positions is well-settled. It gives rise to no doubt. It is notable for its clarity. For petitioner, it is an insurmountable obstacle. So it has been since the opinion of the then Justice, later Chief Justice Concepcion, in *Manalang vs. Quitoriano*,[3] a 1954 decision. An excerpt therefrom is relevant: "This pretense cannot be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been removed therefrom. Secondly, to remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after the ouster. Such is not the case of petitioner herein, for Republic Act No. 761 expressly abolished the Placement Bureau, and; by implication, the office of director thereof, which, obviously, cannot exist without said Bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished thereby. Accordingly, the constitutional mandate to the effect that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law' (Art. XII, Sec. 4, Phil. Const), is not in point, for there has been neither a removal nor a suspension of petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation."[4] Of recent date is *Cruz vs. Primicias, Jr.*,[5] where Justice J.B.L. Reyes as ponente reiterated the *Manalang* doctrine and noted the exception thereto which is the absence of good faith. Thus: "We find this point, urged by respondents, to be without merit. No removal or separation of petitioners from the service is here involved, but the validity of the abolition of their offices. This is a legal issue that is for the Courts to decide. It is a well-known rule also that valid abolition of offices is neither removal nor separation of the incumbents. * * * And, of course, if the abolition is void, the incumbent is deemed never to have ceased to hold office. The preliminary question laid at rest, we pass to the merits of the case. As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void * * *."[6] Since it is evident from the records of the case that there is no showing of bad faith and that the step taken by the Provincial Board is a clear indication of its decision to abolish the position of petitioner, what was done by the lower court is free from any legal infirmity.

2. Petitioner however did try to make out a case for reversal. He took pains to discuss in four of the five errors assigned the rights of a civil service employee, but obviously, such an effort is tinged with irrelevance. There can be no security of term to a position that is no longer in existence. The fourth assigned error is something else, of course. It was therein contended that there was no such abolition. Its opening statement however is practically an admission that the task is hopeless. Thus: "The resolutions relied upon by the respondents as having abolished the position of the petitioner-appellant are Resolutions Nos. 352 and 892 of the Provincial Board of Cebu * * *."[7] A reference to the decision now on appeal would readily disclose that the crucial resolution is neither 352 nor 892 but 870. This is what was said by the lower court, as already set forth in this opinion earlier: "It is true that petitioner was reinstated, in fact he was extended an appointment as Senior Deputy in the Office of the Provincial Treasurer of Cebu Province by the Provincial Governor on September 1, 1964, which appointment was approved by the Commission of Civil Service under Sec. 24 (c) of R. A. No. 2260. As the appointment was approved under

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WHEREFORE, the decision of Judge Santiago O. Tanada of August 1, 1967 is affirmed. No costs.

Zaldivar (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] The other respondents are the Provincial Governor, the Provincial Treasurer and the Provincial Auditor.

[2] Appendix to Brief for Appellant, 20-22.

[3] 94 Phil. 903.

[4] Ibid., 907. Cf. *Eraña v. Vergel de Dios*, 85 Phil. 17 (1949); *Rodriguez v. Montinola*, 94 Phil. 964 (1954); *Gabriel v. GSIS*, 103 Phil. 651 (1958); *Gacho v. Osmefia, Jr.*, 103 Phil. 837 (1958); *Briones v. Osmefta, Jr.*, 104 Phil. 588 (1958); *Magana v. Auditor General*, 107 Phil 900 (1960).

[5] L-28573, June 13, 1968, 23 SCRA 998.

[6] Ibid., 1003. Cf. *Cuneta v. Court of Appeals*, L-1 3264, Feb. 28, 1961, 1 SCRA 663; *Facundo v. Pabalan*, L-17746, Jan. 31, 1962, 4 SCRA 375; *Ulep v. Carbonell*, L-17808, Jan. 31, 1962, 4 SCRA 375; *Llanto v. Dimaporo*, L-21905, March 31, 1966, 16 SCRA 599; *Ocampo v. Duque*, L-23812, April 30, 1966, 16 SCRA 962; *Guillergan v. Ganzon*, L-20818, May 25, 1966, 17 SCRA 257; *Abanilla v. Ticao*, L-22271, July 26, 1966, 17 SCRA 652; *Arao v. Luspo*, L-23982, July 21, 1967, 20 SCRA 722; *Enciso v. Remo*, L-23670, Sept. 30, 1969, 29 SCRA 580.

[7] Brief for the Appellant, 11.

[8] Ibid, Appendix, 20-21.

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