

BARTOLOME BARTOLOME, DEMANDANTE Y APELADO, CONTRA EL AUDITOR GENERAL, DEMANDADO Y APELANTE.

G.R. No. L-6686. March 30, 1954

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DIOKNO, M.:

El recurrente Bartolome Bartolome, es empleado en la tesoreria de la ciudad de Cavite desde 1927 y actuante de Cajero interino de dicha ciudad. Cambio con P3,522.60 de la caja que tenia a su cuidado el U. S. Treasury Check No. 443475, expedido a favor de Anastacio Alcantara, Alangilang, Candon, Ilocos Sur, por la suma de \$1,761.30, moneda de los Estados Unidos a un desconocido que se le presento como Anastacio Alcantara de 277 Lopez Jaenas Street, ciudad de Cavite, y solo por identificacion hecha por un policia local Lorenzo Tolentino, que no consta fuese responsable ni solvente. El Alcantara que se presento no era el librado. No solo habia diferencia de direccion, sino de nombre, Ademas, el cheque llevaba en su adverso esta advertencia; "Payable only in the Manila Branch of the National City Bank of New York." Segun la sentencia apelada, el canje se ha heeho en circunstancias sospechosas.

Informado de lo ocurrido, el recurrido Auditor Insular, por medio de B. Fernandez, Chief Supervising Auditor, Provincial Audit Department, envio al City Auditor de Cavite el siguiente endoso:

"Respectfully returned to the City Auditor, Cavite City, with the information that payment of checks, etc. made in violation of the provisions of Section 542 of the Manual or Instructions to Treasurers is a personal charge against the paying officer. Considering, however, that the cashier of that City must have paid the checks referred to herein, not only on the strength of the identification of the payee but also the guarantee of the payment thereof made by Patrolman Lorenzo Tolentino, of that City, he (Mr. Tolentino) should be required to pay immediately to the City government the amount of P3,531.20 herein involved. If, after demand, he is unable to make payment, that office is hereby authorized, under the provisions of section 624 of the Administrative Code, to order the withholding of one-half of the monthly salaries of both the cashier of that City and Mr. Tolentino—the former as the paying officer responsible for the unauthorized payment of the said check in violation of section 542 of the Manual of Instructions to Treasurers, and the instruction on the face of the check itself that the same 'is payable only at the Manila Branch of the National City Bank of New York', and the latter as guarantor of the payment made to the payee—until the full amount involved shall have been recovered.

"The amount of P3.531.20 in question should be considered as shortage, and the case referred to the City Attorney for the filing of the necessary criminal action against those concerned. It is also requested that recommendation for the institution of proper administrative proceeding against the cashier for this irregularity and his temporary detail to another position with no money responsibility be made."

El City Auditor recurrido Arceo requirio al Tesorero de la ciudad de Cavite el pronto cumplimiento de la orden transcrita, y el recurrido tesorero de la Ciudad Mendoza a su vez informo que no podia hacer la deducccion ordenada del salario del recurrente Bartolome, porque este, desde el 16 de mayo de 1952, no ha retirado su salario. El demandante se acerco al Auditor General Delegado y explico a este el caso. El resultado fue que se le requirio a que pagase la suma entera. Y no lo pago "because there was no formal decision requiring me to pay" (n.

t. p. 11). He aqui lo que el demandante dijo, declarando a su favor en el Juzgado inferior:

Q. Now, do you remember, Mr. Bartolome, that you approached somebody in the General Auditing Office in connection with this case of yours?

* * * * *

A. Yes, sir, I appealed from the decision to withhold one-half of my salary.

Q. Whom did you approach?

A. Mr. Gimenez, the Deputy Auditor General.

Q. And inquiries were made by Mr. Gimenez when you appealed to him?

A. Yes, sir.

Q. Now, after that, Mr. Bartolome, when your salary was being refused to be paid in full, you were required by the City Auditor, or by the Auditor General, or by the City Treasurer, to make good this amount of P3,531.20?

A. In accordance with the correspondence.

Q. You were made to pay?

A. Yes, sir.

Q. But you did not pay?

A. I did not pay because there was no formal decision requiring me to pay.

Q. But why were you appealing to Mr. Gimenez?

A. Because they suspended the payment of my salary."

Como no podia cobrar su salario entero por la orden transcrita del Auditor General, acudio al Juzgado de Primera Instancia de Cavite en demanda de mandamus. El Juzgado se lo concedio en estos terminos:

"* * * This Court finds that respondents Auditor General M. Agregado, Cavite City Auditor Ramon T. Arceo and Cavite City Treasurer Bernardino C. Mendoza are without powers to deduct or withhold the salary due every payday petitioner Acting Cashier Bartolome Bartolome, and hereby grants the writ of mandamus against the respondents—or against whomsoever are acting in their respective positions—directing them and their successors in office to pass in preaudit and pay the compensations already due the petitioner, Acting Cashier Bartolome Bartolome.

"No pronouncement is made as to costs of this action."

Contra esta sentencia el Auditor General, el City Auditor de Cavite, y el Tesorero de dicha Ciudad apelaron directamente a esta Corte, toda vez que no hay cuestion de hecho en el asunto.

Las secciones 2 y 3 del Artículo XI de la Constitucion provee lo que sigue, respecto del Auditor General:

"SEC. 2. The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of fund or property pertaining to or held in trust by the Government or the provinces or municipalities thereof.

"SEC. 3. The decisions of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President whose action shall be final. When the aggrieved party is a private person or

entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law." * * *

La Ley No. 327 del Commonwealth ha prescrito el tiempo en que el Auditor General debe fallar las cuestiones sobre cuentas y la manera de apelar de sus decisiones. Dice en lo que es pertinente a este asunto:

"SEC. 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. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him. With respect to the accounts of accountable officers, the Auditor General shall act on the same within one hundred days after their submission, Sundays and holidays excepted. * * *

"SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing:

(a) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or

(b) To the President of the Philippines, or

(c) To the Supreme Court of the Philippines if the appellant is a private person or entity." * * *

En cuanto al derecho de retencion de dinero perteneciente a Ids que adeuden al Gobierno, dice el art. 624 del Codigo Administrativo Revisado:

"SEC. 624. Retention of salary (money) for satisfaction of indebtedness to Government.—When any person is indebted to the Government of the Philippine Islands or Government of the United States, the Insular Auditor (Auditor General) may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

Y en cuanto al canje con dinero de documentos negociables, dice el articulo 542 del Manual de Instrucciones a los Tesoreros, pp. 390-391:

"SEC. 542. Encashment of other negotiable paper.—The following instruments may be cashed or exchanged with cash without restrictions; warrants of the National and Federal governments; demand drafts and telegraphic transfers drawn upon the Treasurer of the Philippines or a provincial treasury; demand drafts, telegraphic transfers and drawn by government accountable officers upon the Philippine National Bank and its branches; checks drawn on the Philippine National Bank and its branches by its cashier or by the managers of its branches; and checks not in excess of five hundred pesos each drawn on the Philippine National Bank by the National Charity Sweepstakes. In the case, however, of United States war veterans' checks or treasury warrants, the rule shall be that the same may be cashed only if presented by the original payee himself who is known to the treasurer cashing the same. If the said payee is not known to the Treasurer cashing the warrant, proper identification by a responsible and solvent person known to the treasurer shall invariably be required. Under no circumstances shall United States treasury warrants or veterans' checks be paid by a provincial, city or municipal treasurer to an indorser other than the original payee, except postmasters who are hereby authorized to receive them from the payees only. Such warrants paid in violation of these rules will not be accepted in the examination of the accounts of the treasurer concerned and will be made a personal charge against him," (Manual of Instructions to Treasurers, pp. 390-391)

De los hechos no controvertidos en este asunto resulta claro que el recurrente, al canjear el cheque en cuestion, fue negligente (1) al no tener en cuenta que el cheque mismo advertia que este es pagadero solamente en la Sucursal en Manila del National City Bank of New York, (2) al no fijarse que estaba librado a favor de Anastacio

Alcantara, de Alangilang, Candon, Ilocos Sur, y la persona desconocida que se le presento dijo llamarse Atanacio Alcantara, de 227 Lopez Jaena Street, Cavite City, y (3) el no haber contado con "proper identification by a responsible and solvent person known to the treasurer," que invariablemente debe observarse, segtin las instrucciones oficiales. Dicen las instrucciones que todo pago hecho con violation de las mismas no sera acptado en el examen de las cuentas y constituira un cargo personal contra el funcionario que'lo hizo. Desde luego, parafraseando una sentencia antigua de esta Corte sobre un caso parecido, si el Gobierno hubiera presentado demanda en un tribunal de derecho contra el cajero demandante para recuperar el importe de lo estafado, tendria derecho a obtener sentencia a su favor.

La Auditoria General es una autoridad constitucional sobre la contabilidad nacional y sobre el examen, comprobacion y liquidacion de todas las deudas y creditos de la Republica y de sus subdivisiones e instrumentalidades. Como bien dijo esta Corte:

"* * * La competencia de la Auditoria abarca dos materias distintas, a saber: (a) el procedimiento de contabilidad y (b) el estudio, comprobacion y liquidacion de todas las deudas y creditos a favor o en contra del Gobierno. Respecto de esta ultima facultad se notara que la autoridad del departamento comprenda no solamente la revision y aprobacion de las cuentas de los funcionarios del Gobierno, sino tambien el examen y aprobacion de "todas las deudas y creditos de cualquier clase, en favor o en contra del Gobierno de las Islas Filipinas en cualquiera de sus departamentos." "Seria dificil expresar en terminos mas ampllos las facultades de la Auditoria respecto de la hacienda publica."—Compania General de Tabacos contra French y Unson, 39 Phil., 34.

En el caso del cajero demandante, el Auditor General hallo lo que en estos autos consta sin discusion, y no se ha pretendido que la conclusion a que ha llegado fuese equivocada o injusta. No se ha apelado de la decision por el funcionario demandante al Jefe Ejecutivo como provee la ley. Si la decision del Auditor General es concluyente para el ramo ejecutivo, y eso es lo que dice la ley, el fallo que ha dictado en este caso no puede discutirse ya por el cajero demandante.

Pero el demandante prefirio acudir al Juzgado, en vez de apelar al Presidente. Suponiendo sin decidir, que cupiera paso semejante, en el Juzgado, no obstante haber tenido plena oportunidad de probar que no es responsable de la estafa cometida, que ha cumplido con "las instrucciones, y que ha hecho cuanto un funcionario inteligente y honrado debia haber hecho para velar por el dinero publico encomendado a su cuidado, no ha hecho esfuerzo alguno para ello. Se ha encasquetado en el tecnicismo de que no hay decision formal de que el es deudor, y arguye por eso que el Auditor no puede ordenar la retencion de sus salarios.

Pero aparte de que el Auditor General, en su endoso arriba transcrito, lo ha declarado, conforme a los hechos no disputados y a las instrucciones arriba transcritas, personalmente responsable de la cantidad estafada del Gobierno, el cajero es el demandante en este asunto y tiene el deber de demostrar con hechos y no con sutilezas que la justicia esta de su lado para merecerla. Como esta Corte ha dicho en un caso parecido en que el afectado era una entidad privada:

"* * * Es regla de universal aplicacion la de que debe haber meritos en todo recurso de caracter extraordinario, como el actual. Esto es, que debe ser evidente el derecho del recurrente al recurso. No puede decirse otro tanto de un caso en el cual, como en el presente, la presuncion de responsabilidad de parte de la recurrente no ha sido refutada en autos.

"Opinamoa que, a falta de prueba que acredite que el porteador no ha incurrido en culpa en cuanto a la materia que es objeto de discusion, el Auditor Insular tenia derecho a retener, de la recurrente por el importe del flete, una suma suficiente para cubrir el valor del aceite perdido en transito."—Ynchausti Steamship Co. contra Dexter y Unson (1920) 41 Jur. Phil, 308, 312-313.

Salvo la diferencia de que aqui el demandante es un funcionario publico del ramo ejecutivo, el caso mas parecido al presente es el citado de Ynchausti Steamship Co. contra Dexter y Unson, 1920, 41 Jur. Fil. 308, y con arreglo a la doctrina alii reafirmada y tambien a nociones de elemental justicia, el mandamus es aqui improcedente. En su virtud, se revoca la sentencia apelada y se absuelve libremente a los demandados apelantes, con las costas al demandante-apelado en ambas instancia. Asi se ordena.

Paras, Pres., Bengzon, Montemayor, Jugo, Labrador, Pablo, Padilla, Reyes, Bautista Angelo y Concepcion MM., estan conformes.

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