

SANTOS TABUENA, ET AL., PETITIONERS, VS. THE HON. COURT OF APPEALS, ETC., ET AL., RESPONDENTS.

G.R. No. L-16290. October 31, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In Civil Case No. B-152 of the Court of First Instance of Laguna, which was an action for mandamus with damages, judgment was rendered for petitioner Tabuena. The dispositive part of the decision reads:

"Wherefore, judgment is hereby rendered as follows:

(1) The defendant Eugenio de la Cruz, in his official capacity as Director of the Forest Research Institute, is hereby commanded to appoint the plaintiff, Santos Tabuena, to the position of Administrative Assistant II in the Forest Products Research Institute with compensation at the rate of P2,760 per annum within five (5) days from notice of this decision;

(2) The defendant, in his personal capacity, is hereby sentenced to pay to the plaintiff the sum of P230 a month commencing from June 16, 1958 until he shall have been appointed and assumed office as Administrative Assistant II in the Forest Products Research Institute, plus the sum of P3,000 for moral damages and P1,000 for attorney's fees and expenses of litigation, aside from the costs of the suit."

Notice of appeal was filed by respondent De la Cruz, who therein manifested that no appeal bond was required to perfect his appeal. Thereupon, Tabuena filed two motions, both dated April 27, 1959, one, asking the trial court to require respondent De la Cruz to file an appeal bond; and the other, praying that, pending appeal, the trial court order execution of its judgment in so far as it commands the appointment of Tabuena to the position of Administrative Assistant II. After hearing further argument for and against the motions, the trial court issued two orders, both dated July 8, 1959, requiring respondent de la Cruz to file an appeal bond, and pending appeal directing respondent to comply with that portion of the judgment ordering the appointment of Tabuena to the position mentioned. A motion for reconsideration of the above orders was denied (Annex "Q").

De la Cruz then instituted certiorari proceedings in the Court of Appeals to annul the twin orders of July 8, 1959 and that of July 31, 1959 denying his motion for reconsideration. In due course, the Court of Appeals rendered its decision dated October 29, 1959, annulling both orders complained of and making permanent the preliminary injunction it had issued. Upon denial of his motion for reconsideration, Tabuena brought to this Court the instant petition for review by certiorari.

The Court of Appeals sustained the contention of De la Cruz that he was exempted from filing an appeal bond, as a public officer sued in his official capacity; and that consequently, with the filing of the notice of appeal, the trial court lost Jurisdiction to order the immediate execution of its judgment.

We find this conclusion untenable. The general rule is that an appeal bond is required for the purpose of paying for costs which the appellate court may award against the appellant (Sec. 5, Rule 41). As an exception, an appeal

bond is not required of the Government when it is the unsuccessful party, because no costs are supposed to accrue against the Republic of the Philippines unless otherwise provided by law (Sec. 1, Rule 131). But exemption from the filing of bonds applies only where the action is brought by or against public officers impleaded merely as nominal representatives of the Government, and sued purely in their official capacity (*Tolentino vs. Carlos*, 66 Phil. 140; *Chan vs. Villanueva, et al.*, L-5420, April, 1952; *Araneta, et al. vs. Gatmaitan, et al.*, 1G1 Phil., 328; *Hongkong and Shanghai Banking Corp. vs. Rafferty*, 39 Phil. 145; *Gov't. of PI vs. Judge of the Court of First Instance*, 34 Phil., 157).

It appears exceedingly clear in this case that respondent De la Cruz was sued not only in his official capacity as director of the Forest Product Research Institute, but also in his personal capacity for having acted allegedly in manifest bad faith, "with the purpose of persecuting, discriminating against or committing injustice to the petitioner" (par. 13, Ann. "F"); and accordingly, the judgment of the court of origin made him personally liable for damages in varying concepts. Whether or not the trial court committed error in awarding damages against Dela Cruz in his personal capacity is immaterial here, this being more properly cognizable in an appeal from the main case. For our purpose, what is decisive is the dual character in which he was sued and the judgment rendered by the trial court. At least on principle, a public officer, by virtue of his office alone, is not immune from damages in his personal capacity arising from illegal acts done in bad faith (Art. 27, N.C.C.; 43 Am. Jur., 86, 89- 90). A different rule would sanction the use of public office as a tool of oppression.

Whether the trial court had (sufficient reasons for executing its decision is quite another matter. Under Section 2, Rule 39 of the Rules of Court, execution may issue before the expiration of the time to appeal, in the discretion of the court, "upon good reasons to be stated in a special order". Among its reasons for ordering the immediate appointment of Tabuena, the trial court took into account his length of service in the government, the delay that might be entailed in the final disposition of the case, and the consequent prejudice to Tabuena and his family in the meantime. These circumstances may call for sympathy, but hardly warrant the immediate execution ordered. As a solemn trust, occupancy of a public office cannot accommodate the vagaries of personal fortunes. Execution pending appeal must be for weighty reasons in all cases. Said principle is underscored in case public office is involved.

Moreover, the following considerations are pertinent—

"If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes, damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency * * *." (*Aguilos vs. Barrios*, 72 Phil. 285; *Ledesma, et al. vs. Teodoro, et. al.*, 98 Phil., 232; 52 Off. Gaz. [2] 784, italics supplied).

"Lastly, if the respondents are reinstated and paid their back salaries from city funds, and then the appeal in the main case is decided against them, the city stands to suffer irreparable injury because it is hardly to be expected that the said policemen shall be able to make restitution." (*City of Bacolod, et al. vs. Hon. Enriquez, et al.*, 101 Phil., 644; 55 Off. Gaz. [51] 10545). That respondent De la Cruz might retire before the case is finally disposed of cannot render the judgment ineffective because then, his successor in office may be substituted as respondent (Section 18, Rule 3). On the other hand, unless the appeal is unquestionably dilatory, the allusion made by the trial court that the appeal being taken by respondent is only for the purpose of delay (Annex "Q") cannot be a valid reason. This assumption prematurely judges the merits of the appeal (*City of Bacolod vs. Enriquez, et al.*, supra). Whether or not Tabuena is entitled to the office to which he was ordered appointed by the trial court is precisely the very core of the main case.

At any rate, the continued vacancy of the position of Administrative Assistant II in the Forest Products Research Institute does not appear so disruptive of public functions as to impel a provisional appointment of one whose

rights to said office have yet to be finally resolved.

Wherefore, the decision of the Court of Appeals setting aside the trial court's execution of its judgment pending appeal is affirmed; the orders of the trial court dated July 8, 1959 and July 31, 1959, in so far only as they require respondent to file an appeal bond in Civil Case No. B-152, are reinstated; and respondent De la Cruz is hereby given a period of ten (10) days from entry of our judgment within which to file his appeal bond in said Civil Case B-152.

The records of this case are hereby ordered remanded to the court of origin for further proceedings in accordance with this opinion. No costs.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Paredes, and De Leon, JJ., concur.

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