

ALIPIO GONZALES, PETITIONER AND APPELLANT, VS. HON. SERGIO OSMEÑA, JR., CITY MAYOR OF CEBU, THE MUNICIPAL BOARD, THE CITY TREASURER AND THE CITY AUDITOR, ALL OF THE CITY OF CEBU...*G.R. No. L-15901. December 30, 1961*

Ponente: PADILLA, J.

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21 May 1957 Alipio Gonzales filed a petition in the Court of First Instance of Cebu praying for a writ to declare null and void the abolition by the respondent municipal board of his position as deputy detective inspector in the Cebu City Police Department and the termination by the respondent city mayor of his services as such; to order the respondent city mayor to reinstate him to his position as deputy detective inspector; the respondent municipal board to appropriate the corresponding amount for the payment of back salaries to the petitioner from 1 January 1957 until his reinstatement; the respondent city auditor to pass in audit the voucher for the payment of the petitioner's back salaries and the city treasurer to pay him his back salaries; the respondent city mayor to pay him (the petitioner) P10,000 as moral damages, P10,000 as exemplary damages and P5,000 as attorney's fees; and for other just and equitable relief. In support, of his prayer, the petitioner alleged that he is a civil service eligible, having passed the examination for patrolman with a rating of 83.5%, and held the position of deputy detective inspector in the Cebu City Police Department with compensation at the rate of P1,440 per annum; that on or about 28 December 1956 he was served with a letter signed by the respondent city mayor informing him that pursuant to the provisions of Ordinance No. 220, abolishing the position he holds, his services were "terminated effective at the close of office hours on December 3-1, 1956;" that as of the last mentioned date he has served in various capacities in the Cebu City Police Department for a period, of 19 years, 9 months and 2 days; that the respondent city auditor and the respondent city treasurer have refused to pass in audit the voucher for the payment of the petitioner's salary, and to pay his salary from 1 January 1957; that on 3 April 1957 he sought in writing his reinstatement with back salaries but the respondents refused to accede to his demands despite the fact that he was willing and anxious to return to his position and physically fit to discharge the duties thereof; that by the abolition of his position without the approval of the department head and the termination of his services as deputy detective inspector he has been unlawfully excluded from the use and enjoyment of an office to which he is lawfully entitled; that the respondents, with grave abuse of discretion, manifest injustice and in violation of law, have unlawfully neglected the performance of an act specifically enjoined as a duty resulting from their respective offices; that the respondents have discriminated against the petitioner because others with efficiency ratings lower than his have been retained in the service; and that because of the respondents' unlawful acts the petitioner has suffered mental anguish and untold worries for which the former are liable to pay to the latter moral and exemplary damages (Civil No. 5085).

On 18 June 1957 the respondents filed an answer to the petitioner's complaint stating that while it is true that the petitioner was served with notice terminating his service as deputy detective inspector in the Cebu City Police

Department due to the abolition of his position, yet he was simultaneously extended another appointment to a position in the uniformed division of the same Department, with the same rank and a higher salary, but the petitioner refused to accept the position; that the petitioner could not be reinstated to his former position with back salaries because it had been abolished by the respondent municipal board in the lawful exercise of its legislative power; and that, the abolition of the said position need not be approved by the department head because the Chief Executive only has general supervision over local governments; and setting up the following affirmative defenses: that, the abolition of positions in the detective division and creation of positions in the uniformed division of the Cebu City Police Department, upon recommendation of the chief of police, was resorted to to meet the public demand for more uniformed police officers and to make more systematic and efficient the organization and function of the detective division; that the city government of Cebu has the power to create and abolish positions in its various departments; that the abolition of positions and creation of new ones in the city budget do not need the approval of the department head; that the abolition of positions and creation of new ones were done in good faith and without any personal or political regard to the persons occupying them; that the respondent city mayor never intended to separate the petitioner from the service because simultaneously with the termination of his services as deputy detective inspector he was extended an appointment in the uniformed division with the same rank and higher salary but he refused to accept the appointment; that there is a defect of parties; and that the petitioner has other plain, speedy and adequate remedy in the ordinary course of law. As counterclaim the respondents alleged that the petitioner had no valid cause of action and instituted the suit against them to harass and prejudice them; and that by reason of such unjust, malicious and illegal act, the respondents have suffered compensatory, moral and exemplary damages in the total amount of P25,000. They prayed that the petition be dismissed; that the petitioner be ordered to pay to them compensatory moral and exemplary damages in the total amount of P25,000 and double costs of the suit; and that they be granted other just and equitable relief.

On 27 June 1957 the petitioner filed a reply to the respondents' the new appointment extended to him in the uniformed division is tantamount to a demotion because there were other deputy detective inspectors whose efficiency ratings were below his and were new in the service but were retained in that capacity; that the appointment extended to him was temporary in nature because it was subject to the condition that it was "good until revoked" by the respondent city mayor; that there is no defect in the parties because the respondent city mayor is sued personally for the payment of back salaries; that he had sought relief from the administrative branch of the government but the latter had failed to act on his request, thus depriving him of other remedies in the ordinary course of law except this action for mandamus; that he has a valid cause of action against the respondents; that this suit is not merely to harass and prejudice the respondents, hence they could not have suffered any damage; and that he is merely seeking redress against the unlawful acts of the respondents; and praying for the dismissal of the respondents' counterclaim.

On 9 July 1958 the petitioner filed a "motion to amend petition" to implead the incumbent city mayor, the chief of police and the City of Cebu and to substitute the former city auditor by the incumbent, Sulpicio Paredes, as respondents. Attached to the motion was the amended petition. On 11 July 1958 the respondents filed a motion stating that they do not object to the inclusion of the incumbent city mayor and city auditor, but object to the inclusion of the City of Cebu and the Chief of Police as new parties because the period of one year from the date of dismissal from office on 31 December 1956 to the filing of the amended petition on 9 July 1958 to include the City of Cebu and Chief of Police as respondent, already had elapsed, and prayed for the dismissal of the case for non-joinder of the City of Cebu as a party respondent in the original petition.

On 12 July 1958 the petitioner filed a "reply to respondents' opposition" and on 14 July 1958 "additional arguments in support of motion to amend petition and in support of reply to opposition."

On 15 July 1958 the Court entered an order denying the petitioner's motion to admit the amended petition impleading the City of Cebu and the Chief of Police as respondents," but allowing the inclusion of the incumbent city mayor and city auditor as respondents.

At the hearing of the case on 18 February 1959 the parties agreed to submit a stipulation of facts and the Court postponed the hearing to 23 February 1959. On the last mentioned date, the parties submitted the stipulation of facts and the Court granted the parties three days within which to submit their respective memoranda simultaneously. On 24 February 1959 the parties submitted an amended stipulation of facts superseding the original stipulation. The amended stipulation-of facts reads, as follows:

COME now both parties, by their respective counsel, and to this Honorable Court respectfully submit the following REVISED AGREED STIPULATION OF FACTS:

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That petitioner is of legal age and resident of the City of Cebu; that respondent Hon. Sergio Osmeña, Jr., is of legal age, and resident of the City of Cebu; that he is being sued in his private and/or official capacity as then City Mayor of the City of Cebu; that respondent Ramon Duterte is now the incumbent City Mayor by operation of law, succeeding respondent Sergio Osmeña, Jr., when the latter vacated the position to run for Congress in 1957;

- That respondent Municipal Board is the duly constituted and incumbent municipal board of the City of Cebu and is composed of the following: Hon. Ramon Abellanosa, Vice-Mayor and presiding officer, who succeeded respondent Ramon Duterte when the latter succeeded respondent Sergio Osmeña, Jr., as City Mayor; Honorables Casimiro V. Madarang, Joaquin L. Panis, Carlos J. Cuizon, Osmundo J. Rama, Florencio S. Urot, Ceferina U. del Rosario, Pedro V. Clavano, Generoso Jaca, and Cecilio de la Victoria, as members;

- That respondents City Treasurer Felipe B. Pareja is of legal age and the incumbent City Treasurer; that respondent City Auditor Restituto B. Cantos has been replaced already by Atty. Sulpicio Paredes;

- That petitioner is a civil service eligible for patrolman with a rating of 83.5%; that he has served in the police department of the City of Cebu in various capacities for 19 years, 9 months and two days until December 31, 1956, when he was served notice of termination of his service's in the police department as deputy detective inspector, which position he held under a permanent appointment and with compensation at the rate of P1,440.00 per annum, which termination order is literally as follows:

"In view of the abolition of your position pursuant to Ordinance No. 220, as published in two (2) Cebu newspapers of general circulation in the City, please be advised that your services are hereby terminated effective at the close of office hours on December 31, 1956. Very respectfully, (Sgd.) SERGIO OSMEÑA, JR., Mayor, City of Cebu.

and that simultaneously he was extended a new appointment for the position provided for him in the uniformed division of the same Department as police sergeant, which appointment is literally as follows:

"By virtue of the powers vested in me by Section 21 of Commonwealth Act No. 58, as amended by Section 6 of Commonwealth Act No. 129, you are hereby appointed as Police Sergeant in the Office of Police Department, City of Cebu, with compensation at the rate of One thousand six hundred eighty (P1,630.00) pesos per annum effective January 1, 1957, and good until revoked. Very respectfully, (Sgd.) SERGIO OSMEÑA, JR., Mayor.

"Chargeable to: Police

"Item No. 6, Department

"Gen. Fund Budget, 195.....5....."

- That by reason of the aforequoted letter of the respondent City Mayor, terminating petitioner's services, respondents City Treasurer and City Auditor refused and failed and still refuse and fail to pay petitioner's salary since January 1, 1957, as deputy detective inspector;
- That petitioner refused to accept the new appointment tendered to him by respondent City Mayor, which appointment is quoted above; and that on April 3, 1957, petitioner, through his counsel, sought in writing a reinstatement to his position as deputy detective inspector with back salaries, which written demand is as follows:

"In behalf of my client, Mr. ALIPIO GONZALES, I have the honor to request that he be reinstated to his position as deputy detective inspector in the Cebu Police Department.

"It appears that the termination of his services was without the previous approval of the President of the Philippines or the Department Head as required by Executive Order No. 506, s. 1934; Executive Order No. 175, s. 1938; Provincial Circulars dated January 11, 1952, and April 3, 1954; consequently such termination is null and void in accordance with the Supreme Court decision in the case of Pulutan vs. Dizon, et al., 52 Off. Gaz. 3047. It also appears that, as may be seen in the semi-annual efficiency report as of December 31, 1956, submitted by the Chief of Police, Mr. Gonzales ranks third in efficiency among the seven deputy detective inspectors; hence, he has a better right to the position than those he has outranked.

"It is most respectfully reiterated that he be reinstated to his position, with back salaries, since January 1, 1957, within a period of five (5) days from receipt of this letter, otherwise, my client will be compelled to file the corresponding action for a writ of mandamus and to avail of such other remedies and damages as provided by law.

"Thanking you for your kind and immediate attention to this request, I am Very respectfully, (Sgd.) ANTONIO ABAD TORMIS.

but respondents refused and failed and still refuse and fail to reinstate the petitioner to his position, and that petitioner is ready, willing and able to return to his position and is physically fit to discharge the duties appertaining thereto;

- That the abolition of petitioner's position was made without, the consent of the proper department head;
- That failing to get favorable action on his demand for reinstatement, petitioner, through counsel wrote and sent the following letter to the resident of the Philippines on April 30, 1957;

"In behalf of my client, Mr. Alipio Gonzales, I have the honor to request and appeal to your Office to intercede in his behalf in the name of justice and law. As of December 31, 1956, the Honorable Mayor of Cebu City, alleging abolition of his position as deputy detective inspector, terminated his services, discriminating him against in favor of those whose services are less efficient and who had been in the government shorter in period than he had been. Mr. Gonzales has been in the government for 19 years and devoted the best years of his life as a humble public servant. Last April 3, 1957, I wrote His Honor, the Municipal Board, the City Treasurer and the City Auditor requesting the reinstatement of my client with back salaries. Except the Municipal Board all these officials ignored my letter. The Board, however, through its secretary informed me in writing that my letter was being referred to the municipal board, but to date no action has been taken, at least, I have not been informed of any action whatsoever. I am enclosing herewith a copy of this letter.

"In view of the fact that my appeal for reinstatement of my client had been ignored, I am appealing to Your Excellency. Hoping Your Excellency will heed my appeal and order the reinstatement of my client, and thanking Your Excellency for an early and favorable action, I remain, Very respectfully, (Sgd.) ANTONIO ABAD TORMIS.

but up to the present the President has taken no action on said appeal whatsoever;

- That as per certificate of the respondent City Treasurer based on the semi-annual efficiency report submitted by the Chief of Police, the efficiency ratings of the seven deputy detective inspectors as of December 31, 1956, are as follows:

Enrique Villaflor

92%

Alipio Gonzales

89%

Terencio Garciano

86%

Manuel Bacud

84%

Teodoro Abesia

88%

Rafael Navaja

82%

Vicente Basak

93%

- That there is no plain, speedy, and adequate remedy in the ordinary course of law of except this action for a writ

of mandamus;

- That petitioner was extended a new appointment as sergeant in the uniformed division of the police department of Cebu City after his position, as deputy detective inspector in the detective division was abolished by the city budget approved during the administration of the then City Mayor Jose V. Rodriguez, this after the city fiscal of Cebu had opined that a new appointment is necessary to adjust budget.

WHEREFORE, this Honorable Court is most respectfully prayed to render judgment in accordance with the foregoing REVISED AGREED STIPULATION OF FACTS. The parties hereto have mutually agreed to withdraw, as it is hereby withdrawn, the first agreed stipulation of facts, dated February 23, 1959.

Respectfully submitted on this 24th day of February, 1959.

After the parties had submitted their respective memoranda, on 27 February 1959 the Court rendered judgment holding that following the case of Gacho vs. Osmeña, 55 Off. Gaz. 10079, the petitioner should be reinstated to his former position and should be allowed "to continue holding the same with all the rights appurtenant thereto, in accordance with law;" but, relying on the case of Angara vs. Gorospe, 96 Phil., 545; 53 Off. Gaz. 4480, not entitled to back salaries, because "The City of Cebu should be made a party respondent, if it is sought to make it pay with "its funds for back salaries of the petitioner," and directing the respondent city mayor to reinstate him to his former position, with costs against the respondent city mayor.

On 4 March 1959 the petitioner filed a motion for reconsideration of that part of the judgment denying his claim for back salaries from 1 January 1957 until his reinstatement and prayed that the respondents be ordered to; pay him his back salaries from the date of his dismissal to the date of his reinstatement or, in the alternative, the respondent Sergio Osmeña, Jr., be ordered to pay him out of his own funds. On 5 March 1959 the respondents filed an objection to the for reconsideration. On 7 March 1959 the petitioner's motion Court denied his motion for reconsideration. On 16 March 1959 the petitioner filed a notice of appeal from that part of the judgment, which denies "his claim for back salaries" and a "motion for immediate execution of judgment pending appeal" and a "motion for approval of appeal bond after resolution of motion: for immediate execution of judgment." On 19 March 1959 the respondents filed an "opposition to motion for immediate execution of judgment." On 21 March 1959 the Court entered an order granting the petitioner's motion for execution of the judgment pending appeal "insofar as it orders the petitioner's reinstatement only." On 31 March 1959 the Court approved the appeal bond filed by the petitioner.

The respondents have not appealed.

The recent case of Mangubat vs. Osmeña, Jr., G. R. No. L-12837, 30 April 1959, upholds the appellant's claim for back salaries. Said this Court in that case—

In support of the first proposition (that the case must be dismissed for lack of an indispensable party), appellants assert that the City of Cebu is an indispensable party on account of petitioners' claim for back salaries, and that in view of the fact that said City has not been made a respondent in this case, the same should be dismissed.

"* * * * *

The necessity of making the City a respondent herein is based upon its right to defend itself, as demanded by the requirements of due process. However, those requirements have been (substantially complied with in the case at bar. The parties therein have handled the case, and the same was heard and decided in the lower court, as if the City had been named respondent in the pleadings. The officer required by law "to cause to be defended all suits against the City", namely, its mayor (Sec. 8, Commonwealth Act No. 58), is respondent in his official capacity. The officer charged with the duty to represent the City "in all civil case's wherein the city

*** is a party" -to wit, its City Attorney (Sec. 17, Commonwealth Act No. 58)- is counsel for respondents herein. In addition thereto, the auditor, the treasurer and even the municipal board of the City of Cebu, are parties respondents.

There is no reason to believe that these officers and the City Mayor would have exerted greater efforts, than those already displayed by them, in protecting the interests of the City of Cebu, were it formally a respondent herein. Indeed, it is only logical to expect that, having been individually named as respondents, said officers must have taken as much concern, if not more, in warding off petitioners' claim. Under the foregoing circumstances, we would be subordinating the substance to the form if the action for mandamus-insofar as the claim for back salaries is concerned - were, either dismissed, or remanded to the lower court, for the corresponding amendment of the pleadings and a repetition of the proceedings held for the last five (5) years, in order to reach the same decision rendered by the lower court and the same conclusions set forth in this decision, as regards the substantive rights of the parties. It is our considered opinion, therefore, that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleadings had been made."

In the case at bar the incumbent City Mayor, the Municipal Board, City Auditor and City Treasurer have been named as respondents and it will be recalled that the appellant had sought the inclusion of the City of Cebu as a respondent in these proceedings. For the same reasons, given in *Mangubat vs. Osmeña, Jr.*, supra, "the ends of justice, and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleadings had been made."

The appellees contend that the appellant's refusal to accept the promotional appointment of police sergeant precludes him from demanding back salaries. The appointment foisted upon the appellant was temporary only because it was "good until revoked," and being a civil service eligible holding a permanent position, he had all the right to decline it.

The part of the judgment appealed from is reversed and the respondents directed to pay the appellant back salaries from 1 January 1957 until his reinstatement in the service, without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and De Leon, JJ., concur.

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