

**RICARDO DOMINGUEZ, DANIEL SAN MIGUEL, MARIANO CARDENAS,
AND MONICO GUTIERREZ, PETITIONERS AND APPELLANTS, VS.
GOVERNOR WENCESLAO PASCUAL, BOARD MEMBERS AMADO
GERVACIO AND VICENT...**

G. R. No. 10057. March 30, 1957

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The basic facts in the present case are not disputed. They are based on the stipulation of facts filed by the parties and a few documents, principally official letters and indorsements, presented in evidence during the hearing. The four petitioners herein, all civil service eligibles, were employees of the Province of Rizal, and in June, 1952, had been working as such employees for several years: petitioner Ricardo Dominguez as a junior clerk in the Office of the District Health Officer, with a salary of P1,920 per annum; Daniel San Miguel and Mariano Cardenas as Deputy Assessors in the Provincial Assessor's Office of Rizal with a salary of P1,560 per annum each; and Monico Gutierrez as Superintendent of Non-Christian Tribes of the province, with a salary of P1,140 per annum. In preparing and approving the annual budget of the province for the fiscal year 1952-1953, the Provincial Board eliminated their positions for "insufficiency of funds to inaugurate improvements necessary for the public welfare." All the petitioners were notified of the abolition of their positions on June 30, 1952, except Dominguez who was notified on July 2, 1952.

Immediately after being notified of the abolition of their positions from the annual budget, petitioners protested said abolition and appealed to the Secretary of Finance who disapproved said abolition and directed the Provincial Board to restore the positions eliminated. Because the Provincial Board did not heed said directive, petitioners appealed to the Chief Executive, who concurred in the view taken by the Secretary of Finance, and on several occasions directed the Provincial Board to restore the positions abolished. Because of said several directives of the President, and presumably under pressure, the Provincial Board finally recreated the four positions in question, effective on August 15, 1953, the petitioners to receive pay only upon assumption, or rather, reassumption of their positions. Claiming that the abolition of their positions in the 1952-1953 annual budget was illegal, petitioners filed the present action for mandamus to compel the members of the Provincial Board to appropriate the necessary amount for their salaries, which they failed to receive from July 1, 1952 to August 15, 1953, and for the Provincial Auditor and Provincial Treasurer to approve and make such payment to them. Petitioners also claim moral damages and attorney's fees.

After hearing, the Court of First Instance of Rizal, through Judge Demetrio B. Encarnacion, rendered judgment against the petitioners, the dispositive part of which reads as follows:

"In view of the foregoing considerations, this Court hereby renders judgment declaring the abolition of the positions of the petitioners in 1952-53 annual budget of the province of Rizal, lawful and legal, but requiring respondents to appropriate the necessary funds to pay petitioners' salaries for services actually served, without pay, up to the time they were duly notified that their positions in the 1952-53 budget of the province of Rizal

were abolished. Without pronouncement as to costs."

Petitioners appealed to the Court of Appeals, but said court after studying the case, by resolution dated August 31, 1955, certified the appeal to us on ground that only questions of law were involved.

The only possible dispute on questions of fact is as to whether the positions and services of petitioners were necessary for the efficient administration of the province of Rizal, the petitioners claiming and presenting documents in support of their claim that their services were still necessary, as vouched for by their immediate chiefs, while the respondents maintain that said services could . very well be dispensed with, specially with regard to petitioners Cardenas and San Miguel, employed in the Office of the Provincial Assessor, who according to the records of said office received the lowest efficiency ratings, and because said two petitioners were employed as Deputy Assessors primarily for the general revision of assessment, and that said revision had been completed a year before the abolition of their posts. However, because of the view we take of the case, we deem it unnecessary to go into and discuss this phase of the case. To us the decisive question is whether or not the Provincial Board of Rizal had the authority to abolish said four positions.

Petitioners-appellants contend that they were illegally removed from their positions because there was no valid cause for the same, but we have already held in the case of *Manalang vs. Quitoriano*,^[1] G. R. No. L-6898, April 30, 1954, that the abolition of a position does not involve or mean removal for the reason that removal implies that the post subsists, and that one is merely separated therefrom, but that when the post itself is legally abolished, then there is no removal.

As to the validity of the abolition of the posts in question, the case of *Rodriguez vs. Montinola*,^[2] G. R. No. L-5689, May 14, 1954, is squarely in point. In said case, the Provincial Board of Pangasinan abolished the three positions of Special Counsel in the Office of the Provincial Fiscal over the objection of the Fiscal himself, who insisted that he needed the services of the three Special Counsel, and who appealed to the Secretary of Finance' who disapproved said abolition of the three positions. To test the authority of the Secretary of Finance to disapprove said resolution of the Provincial Board abolishing the three positions, the members of the Provincial Board filed an original action for certiorari. Through Mr. Justice Alejo Labrador, who penned the decision of this Court, we held that under the Constitution, the President has no control but only powers of general supervision over local governments; that despite the provisions of law and executive orders and circulars to the effect that the powers of the Provincial Boards over the preparation of the annual budget and appropriation of money for purposes not specified by law, are subject to the approval of the Secretary of Finance, nonetheless, the suppression of the positions of three Special Counsel is not a financial matter falling under the supervisory powers of the Secretary; neither is the question whether or not "the services of the three Special Counsel be stopped and the funds appropriated for them used for other services", a financial matter; that the Secretary of Finance is an official of the central government, not of provincial governments, and that the power of general supervision given to the Secretary over local governments does not include the right to direct action, or even to control action, but includes only correction of violations of law or gross errors, abuse of office, or maladministration; and that even as a representative of the President, the Secretary of Finance may not disapprove the resolution of the Provincial Board suppressing the positions of these Special Counsel, the same not being contrary to law, or act of maladministration, or an act of abuse. We further said that it was the Provincial Board that created the positions in question, and so it was its consequent prerogative to abolish said positions in the exercise of its discretion.

The trial court in the present case found that there was nothing personal or irregular in the abolition of the positions of the petitioners herein. We quote the pertinent portion of the decision:

"The principal ground for the abolition of the positions of the petitioners in this case was insufficiency of funds to inaugurate improvements necessary for the public welfare. There was nothing personal, according to the

evidence, to show that the positions of petitioners were abolished for political or other reasons. It appears from the evidence that the matter has been brought to the higher authorities. That these higher authorities, without considering the reasons and circumstances behind the abolition of the positions' of the respondents readily ordered their reinstatement.

"A thorough study of all the facts "of this case, as enumerated in the stipulation of facts submitted and all the exhibits presented by both parties hereto, led this Court to find and so hold that the abolition of the positions of the respondents herein was legal."

We therefore agree with the trial court that the Provincial Board of Rizal was legally authorized in suppressing the positions of the petitioners without the sanction or approval of the Secretary of Finance, or even of the President. However, in justice to the petitioners, we believe that they are entitled to separation pay for one month, in lieu of the one month notice which they failed to receive. This is provided for in Executive Order No. 506 of September 12, 1984. This one month pay or one month notice before separation was formerly provided for in the Code of Commerce, Article 302. With the repeal of said provision of the Code of Commerce, Republic Act No. 1052 was passed, providing for the payment of the same with regard to laborers and employees. We deem it but just to extend the same privilege to the petitioners herein inasmuch as they were not given one month notice of the abolition of their positions. With this modification, the decision appealed from is hereby affirmed. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angela, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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