

ANSELMA ABELLA, ET AL., PETITIONERS AND APPELLEES VS. JOSE RODRIGUEZ, ET AL., RESPONDENTS AND APPELLANTS.*G. R. No. 10512. November 29, 1957*

Ponente: PADILLA, J.

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In a second amended petition filed in the Court of First Instance of Cebu, the petitioners pray that the removal from their positions be held illegal; that the respondent City Mayor, or his successor, be directed to reinstate them to their respective positions and to pay their back salaries from their removal to their reinstatement, the sum of P1,000 as attorney's fee and P5,000 as exemplary damages; that the City Auditor and Treasurer, or their successors, also be directed to pass in audit, approve and pay their back salaries; and that they be granted such other remedies as may be just, proper and equitable in the premises. In the second amended petition the Municipal Board of the City of Cebu was impleaded in compliance with an order of the Court; but before the filing of the second amended petition, the holders of the positions or employment to which the petitioners seek reinstatement moved that they be allowed to intervene as party respondents. The Court granted their motion to intervene and they filed their answer praying that the petition be dismissed, that the respondent city officials be directed to pay their salaries, and that the petitioners be condemned to pay moral damages and attorney's fees. Other incidents such as payment of salaries to the intervenors as directed by the Court on motion need not be stated.

The agreed statement of facts submitted by the parties is in brief as follows: The petitioners, who were not civil service eligibles, were employed in the office of the City Treasurer of Cebu in different capacities—Anacleto Macachor, Rosalia Caburnay and Jesus Felices as market helpers; Flavio Tamarra, Cornelia Bacay, Cristeta Zamora and Preciosa Tibon as market laborers; Anselma Abella as laborer-helper; Consorcía Cabarrubias as office helper; and Soledad Calledo as semi-skilled laborer. On 24 November 1952, Jesus Felices; on 16 December 1953, Flavio Tamarra, Anacleto Macachor, Cristeta Zamora, Preciosa Tibon and Consorcía Cabarrubias; on 17 December 1953, Angelina Abella; on 8 December 1953 Rosalia Caburnay; on 6 January 1954, Cornelia Bacay; and on 19 January 1954, Soledad Calledo, were notified by the City Mayor of Cebu that as the positions held by them were "temporary in nature," their services were "terminated effective at the close of business hours upon receipt" of notice, and that the intervenors were appointed to replace them in their respective positions. Since then, the City Auditor of Cebu refused to pass in audit their respective claims for salary and the City Treasurer failed to pay their salaries. The respondent City Mayor refused to reinstate them to their respective positions notwithstanding repeated requests.

Upon the foregoing facts stipulated and agreed upon by the parties, the Court rendered judgment— * * * (i) declaring the removal of the petitioners as unlawful, illegal and void; (2) ordering the respondent Jose V. Rodriguez in his capacity as City Mayor of Cebu or his successor, to reinstate the petitioner with right to receive their back salaries from the date of their removal until their reinstatement; (3) ordering the respondents City Treasurer and City Auditor or their successor to approve, pass in audit and pay the back salaries of the petitioners; and (4) ordering the respondents to pay the petitioners P500 as attorney's fees. Without special pronouncement as to costs.

Motion for reconsideration having been denied, the respondents and intervenors have appealed.

In the case at bar, the earliest cause of action accrued on 24 November 1952 with the dismissal of Jesus Felices and the latest accrued on 19 January 1954 with the dismissal of Soledad Calledo, while this proceedings was commenced on 15 April 1955, more than one year from the date of ouster from office. In line with the ruling in the case of *Unabia vs. City Mayor of Cebu*,[*] 53 Off. Gaz., 132, the delay in bringing the action by the petitioners constitutes laches and abandonment of their former positions to which they seek reinstatement.

The judgment appealed from is reversed and the petition dismissed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[*] 99 Phil., 268.

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