

PONCIANO GACHO, ET AL., PETITIONERS, VS. HON. SERGIO OSMEÑA, JR., ETC., ET AL., RESPONDENTS.

G.R. No. 10989. May 28, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Prior to May 26, 1956, the above-named twenty-seven (27) petitioners held positions, under permanent appointments, as detectives in the Police Department of the City of Cebu, with a compensation of P1,440 per annum. They were, also, insured under the Government Service Insurance System. Twenty (20) of them are civil service eligibles. Their names, length of service and efficiency ratings are:

Name

Length of Service

Efficiency Ratings

"1.

P. Gacho.....

9 years

90

2

L. Alfara

8 years

7 months

89

3

V. L. Abella

10 years

9 months

90

4

C. Alejandro.....

10 years

3 months

Suspended

5.

Roque Caballes

9 years

8 months

89%

6

Jose Almeda.....

8 years

2 months

87%

7.

Lucio Alforque

9 years

8 months

82%

8

N. Faunillan.....

8 years

1 months

86%

9

Herminio Solon

9 years

8 months

90%

10

Primo Samson

9 years

8 months

89%

11

Romeo Colina

1 years

9 months

84%

12

Rafael Galan.....

9 years

10 months

84%

13

T. Daclan.....

9 years

8 months

85%

14

V. Atillo

5 years

5 months

87%

15

Daniel Datan.....

15 years

10 months

85%

16

D. Deiparine

9 years

8 months

88%

17

E. Delgado.....

9 years

8 months

85%

18

Romulo Matela

9 years

8 months

87%

19

M. Tenchavez.....

9 years

83%

20

Jose Torres.....

8 months

5 years

84%

The rest have no civil service eligibility. Their names, length of service and efficiency ratings follow:

Name

Length of Service

Efficiency Ratings

"1. Antonio Echivarre 9 years 90%

3 mos.15 days

2 Miguel Cabaral 9 years 85%

9 months

3 Natalio Navarro 2 years 85%

2 months

4 Balbino Nadela 15 years 82%

5 months

5 Ciriaco Sasada 9 years 90%

8 months

6 Cornelio Laborte 9years 85%

8 months

7. Isidro Ramos 3 years 90%

4 months

In 1953, the Mayor of Cebu dismissed, among others, twenty (20) of herein petitioners, who were subsequently reinstated, however, in compliance with final judgments of competent courts, declaring such dismissal illegal, in the following cases:

- Mission, et al vs. Vicente del Rosario, et al.,[*]G. R. No. L-6754 of the Supreme Court (decided on February 26, 1954; 50 Off. Gaz., 1571, as regards Lorenzo Alfafara, Vicente L. Abella, Roque Caballes, Lucio Alforque, Antonio Echivarre, Primo Samson, Rafael Galan, Tranquilino Daclan, Victoriano Atillo, Daniel Datan, Dionisio Deiparine, Epifanio Delgado, Cornelio Laborte, Romulo Matela, Melchor Tenchavez and Ponciano Gacho;
- Salvador Saavedra, et al. vs Vicente del Rosario, Civil Case No. R-3153 of the Court of First Instance of Cebu (decided on March 22, 1954), as to Balbino Nadela;
- Jose Almeda vs. Vicente del Rosario, et al., Civil Case No. R-3214 of the same court (decided on December 20, 1954), as to Jose Almeda;
- Miguel Cabaral vs, Vicente del Rosario, et al., Civil Case No. R-3161 of said court (decided on November 26, 1954), as to Miguel Cabaral; and
- Rodriguez, et al. vs. Del Rosario, et al.,[*]G. R. No. L-6715 of the Supreme Court (decided on October 30, 1953; 49 Off. Gaz., 5427), as to Nicasio Faunillan.

On February 9, 1955, the Municipal Board of Cebu approved Ordinance No. 188 thereof, appropriating funds for the operation of the City of Cebu during the fiscal year 1954-3 955. Items 19 and 28 of said

Ordinance read:

"19. Thirty-eight Patrolmen at P1,440 per annum each (transferred from Seventy-one Detectives).....P54,720.00

"28. Thirty-three Detectives at P1,440.00 per annum each (from Seventy-one Detectives at P1,440.- per annum each).....47,520.00"

Referring to this Ordinance, the Department of Finance in a communication dated June 14, 1955, stated;

"Likewise, no objection is offered to the changes in designation of certain positions and the abolition of sixteen positions of immunization sanitary inspectors provided no one, especially a civil service eligible, will be prejudiced of Executive Order No. 506, dated September 12, 1932 and provincial Circular (Unnumbered) dated January 11, 1952 of the Office of the President, both bearing in part on the abolition of positions in an office."

Owing to the failure of the Municipal Board of Cebu City to enact a new budget for the fiscal year 1955-1956, the appropriation incorporated in said Ordinance No. 188 was deemed reenacted for that fiscal year (C.A. No. 58, sec. 15). On May 12, 1956, respondent City Mayor wrote to petitioners herein identical letters (Annexes I and I-1 to 1-24) advising them that their positions as detectives had been abolished by said Ordinance No. 188 "effective immediately" and at the same time enclosing therewith their appointments as patrolmen, effective May 16, 1956, but "good until revoked" (Annexes J and J-1 to J-24). Petitioners refused to accept these appointments, in the belief, according to their petition (par. 18 of the original petition; par. 17 of their amended petition) "that this was another scheme to effect their removal and a devise to go around the provisions of Republic Act No. 557 and other laws, executive orders, regulations and circulars, since, as already mentioned above, 20 of said petitioners had already been victims of illegal mass dismissals, but were reinstated by judicial authority." However, the City Auditor and City Treasurer of Cebu City refused, and still refuse, to authorize payment and to pay the salaries of petitioners herein since May 16, 1956, copies of said letters Annexes I and 1-1 to 1-24 having been furnished said

officers. Inasmuch as respondent City Mayor refused to reconsider his action as regards petitioners herein, the latter instituted the present case against the City Mayor, the Municipal Board, the City Auditor, the City Treasurer and the Chief of Police of the City of Cebu, as well as the City of Cebu itself. The latter was, subsequently, excluded as respondent, in an amended petition thereafter filed by petitioners herein. After setting forth the foregoing facts and alleging that their aforementioned dismissal is illegal and violative of Article XII, section 4, of the Constitution, section 694 of the Revised Administrative Code, Executive Orders Nos. 506 (dated September 12, 1934) and 175 (dated November 11, 1938), and unnumbered Provincial Circulars issued by the President of the Philippines on January 11, 1952 and April 3, 1954; that petitioners have thus been excluded from the use and enjoyment of their positions; and that respondents have unlawfully neglected the performance of an act which the aforementioned laws, executive orders and circulars specially enjoin as a duty resulting from their office, by separating the petitioners from the service, petitioners pray this Court in their amended petition:

"(A) Pending final determination of this case:

- (1) To issue a preliminary mandatory injunction restoring the petitioners to their positions, and directing the respondents City Treasurer and City Auditor to pay their salaries;
- (2) To fix the bond for the preliminary mandatory injunction and to authorize any Judge of the Court of First Instance of Cebu to approve said bond in such amount as this Honorable Court may determine; and further directing that upon approval of said bond, petitioners be restored and their salaries paid; and

"(B) After hearing:

- (1) To declare the abolition of the position and/or the removal and/or the transfer of said petitioners to the uniformed division as made with grave abuse of discretion and/or as null and void and without any force and effect whatsoever;
- (2) To make the preliminary mandatory injunction permanent and/or order the respondents to reinstate the petitioners to their positions as detectives in the police department of the City of Cebu with back salaries from May 16, 1956, until they are restored to their positions;
- (3) To order the respondent City Mayor Sergio Osmeña, Jr., to countermand his advices ANNEXES T to 'I-24' to the petitioners and to restore them to their positions;
- (4) To order the Municipal Board to set aside such amount as correspond to the salaries of petitioners;
- (5) To order the City Auditor to pass in audit, and the City Treasurer to pay, the salaries due to petitioners from May 16, 1956 until they are restored;
- (6) To order respondent City Mayor to pay the costs of this action and, in the alternative, to order the respondent City Mayor to pay the petitioners their back salaries;
- (7) To grant petitioners such other remedies and reliefs as are just and equitable in the premises."

In their answer, respondents alleged that the word "permanent" does not appear in the appointments originally extended to petitioners herein; that the City of Cebu may validly abolish old positions and create new ones; that Ordinance No. 188 had lawfully abolished the old positions of petitioners herein as detectives in the Police Department of Cebu City; that petitioners were not removed from office, and, hence, may invoke, neither the Constitution, nor Republic Act No. 557, nor section 694 of the Revised Administrative Code, which are inapplicable; that respondent City Mayor is clothed with authority to freely choose the men to fill up the newly created positions of policemen of the City of Cebu; that, in the legitimate exercise of such authority, said respondent extended new appointments to the petitioners, thus believing his alleged intent to circumvent the laws, executive orders and circulars above mentioned; that in acting as he did, respondent City Mayor merely followed

the opinion given by the City Fiscal, the City Auditor and the City Treasurer of Cebu; and that by petitioners' failure to accept said new appointments, they had "forfeited and lost their new positions in the uniformed division" of the police department of Cebu.

Pursuant to the Charter thereof (C.A. No. 58, as amended), the City of Cebu shall have, and has, a police department, with "a chief of police who shall have charge of the police department and everything pertaining thereto, including the organization, government, discipline, and disposition of the city police and detective force" (Sec. 32), and "an assistant chief of police whose duties shall be to act as chief of police in the absence or inability to act of the chief of police, and under the direction of such chief of police to look after the discipline of the police force and to perform such other duties as may be imposed upon him by the chief of police or prescribed by law or ordinance" (Sec. 33). There shall, also, be, in the City of Cebu, "a chief of secret service who shall, under the chief of police, have charge of the detective work of the department and of the detective force of the city, and shall perform such other duties as may be assigned to him by the Chief of police or prescribed by law, or ordinance" (Sec. 34). The powers and duties of the chief of police, assistant chief of police and chief of secret service, as well as those of the members of the city police and detective force, are set forth in Section 35, reading:

"The Mayor, the chief and assistant chief of police, the chief of the secret service, and all officers and members of the city police and detective force shall be peace officers. Such peace officers are authorized to serve and execute all processes of the Municipal Court and criminal processes of all other courts to whomsoever directed, within the jurisdictional limits, of the city or within the police limits as hereinbefore defined; within the same territory, to pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace; to arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view; in such pursuit or arrest to enter any building, ship, boat, or vessel, or take into custody any person therein suspected of being concerned in such crime or breach of the peace, and any property suspected of having-been stolen; and to exercise such other powers and perform such other duties as may be prescribed by law or ordinance. They shall detain an arrested person only until he can be brought before the proper magistrate. Whenever the Mayor shall deem it necessary, to avert danger or to protect life and property, in case of riot, disturbance, or public calamity, or when he has reason to fear any serious violation of law and order, he shall have power to swear in special police, in such numbers as the occasion may demand. Such special police shall have the same powers while on duty as members of the regular force."

Having these provisions in mind, let us now consider the main issue in this case, namely: Have the positions held by petitioners herein, as members of the police department of the City of Cebu, been abolished by Ordinance No. 188?

The 1953-1954 budget of the City of Cebu for the fiscal year 1953-1954, Ordinance 167 thereof (Annex 11), contained, under the heading of Police Department, the following item:

"22. Seventy-one detectives at P1,440.00 each per
annum.....P102,240.00".

This item was split in Ordinance No. 188 into two (2) items, namely:

"19. Thirty-eight Patrolmen at P1,440 per annum each (transferred from Seventy-one
Detectives).....P54,720.00.

"28. Thirty-three Detectives at P1,440.00 per annum each (from Seventy-one Detectives at P1,440.- per annum each)....P47,520.00",

It will be noted that Item No. 19, for thirty-eight (38) patrolmen at P1,440.00 per annum each, explicitly declares

that it was merely "transferred" from the afore-mentioned Item No. 22 in Ordinance No. 167 for seventy-one (71) detectives. Now to "transfer" is to convey something; to transport, to move or to cause it to pass from one place to another. That which is transferred must be, therefore, something in existence, for that which does not exist cannot be transported, conveyed, moved or caused to pass from one place to another. Upon the other hand, to "abolish" is to do away with, to annul, abrogate or destroy completely. As a consequence, what has been abolished ceases to exist or disappears, and, hence, it cannot be "transferred." Prima facie, therefore, said Item No. 39 of Ordinance No. 188 does not connote abolition of the thirty-eight (38) positions of "detectives" therein alluded to. On the contrary, the transfer of the item for said positions to another section, branch or division of the police department, suggests the retention and preservation of said positions.

Does the use of the term "patrolmen" in Ordinance No. 188 in lieu of "detectives", indicate the intent to abolish said thirty-eight (38) positions? Regardless of the negative implication, of the term "transfer", an affirmative answer would, perhaps, have been possible if the powers and duties attached by law to the position of patrolmen, were legally different from those vested in detectives. However, the above-quoted section 35 of the Charter of Cebu assigns the same power and duties to both. Hence, in *Mission vs. Del Rosario* (supra), we declared that "both detectives and policemen perform common functions and duties, and both belong to the police department," and the communication of the Department of Finance of June 14, 1955 (Annex G) approving Ordinance No. 188, referred to Item No. 19 thereof as involving-a "change of designation", as distinguished from "the abolition of sixteen (16) positions of immunization sanitary inspectors * * *." In other words, the language used in said Item No. 19 of Ordinance No. 188 indicates the intent to maintain the positions therein referred to, although in another branch of the same police department of Cebu.

This was, evidently, what the framers of Ordinance No. 188 had in mind, for the administration that approved it, in 1955, did not declare that the positions held by petitioners had been abolished, and, instead, retained them in their aforesaid positions without extending to them new appointments. Such contemporaneous interpretation given by those responsible for the enactment of said Ordinance is strongly indicative of the intent of its authors and refutes respondents' pretense.

The cases of *Manalang vs. Quitoriano*,[*]G.R. No. L-6898 (decided on April 30, 1954), and *Ocampo vs. Secretary of Justice*, G. R. No. L-7910 (decided on January 18, 1955), cited by respondents, are not in point. The last case involved the constitutionality of section 3 of Republic Act No. 1186, expressly abolishing "all existing positions of Judges-at-Large and Cadastral Judges." There is no similar provision in the case at bar. What is more, the provision in Ordinance No. 188 transferring the item for thirty-eight (38) detectives suggests the retention-not the abolition-of the positions of said detectives.

Besides, in the *Ocampo* case, seven (7) members of the Court or a clear majority thereof voted to declare said section 3 of Republic Act No. 1186 unconstitutional. Only (3) Justices (the Chief Justice, Mr. Justice Reyes [A.], and Mr. Justice Labrador) voted to uphold the legality of said provision. Mr. Justice Padilla voted with the majority on the lack of power of Congress to abolish positions of Judges of First Instance, on which there were, therefore, eight (8) votes, or those required to declare a law unconstitutional. However, he believed that the law creating the positions of Judges-at-Large and Cadastral Judges "offends against section 7, Article VIII, of the Constitution." Being, in his opinion unconstitutional, said positions were, from his viewpoint, legally non-existent. In other words, he, in effect, maintained that section 3 of Republic Act No. 1186 did not abolish any position in the bench, and that it merely made a formal declaration of such non-existence.

So, too, the *Manalang* case involved the interpretation of Republic Act No. 761, which "expressly abolished the Placement Bureau," of which *Manalang* was Director. As already adverted to, there is, in the present case, not only no express abolition, but, also, an implied retention, of the positions in dispute herein. Although the functions

of the Placement Bureau were transferred to the National Employment Service created in said Act, we held that the latter office is "different and distinct" from the former, inasmuch as the National Employment Service was given some functions not vested in said Bureau or any other office. In the case at bar, the powers and duties conferred by law upon the uniformed division and the detectives of the Police Department of the City of Cebu are one and the same. Furthermore, Manalang admitted-in-fact, he alleged-that the position of Commissioner of the National Employment Service necessitated a "new appointment", which is denied by petitioners herein.

The local precedent involving a situation analogous to that of petitioners herein is that of *Brillo vs. Enage*,[*]G.R. No. L-7115 (decided on March 30, 1954), in which we held that the justice of the peace of the municipality of Tacloban, which was converted into a city, had a right to preside, without a new appointment, the municipal court of Tacloban, there having been, not an abolition of the justice of the peace court of Tacloban, but merely a change of name thereof. Verily,

"A statute, although purporting to abolish municipal office, cannot have the effect of removing officers holding under the city charter when the act restores the offices under another name." (43 C. J. p. 601, citing *Malone vs. Williams*, 118 Tenn. 390, 108 S.W. 798, 121 Am SR 1002,)

"An ordinance merely changing the name of an incumbent's position in the city employ does not create a new position requiring a new appointment." (43 C.J., sec. 976, p. 600, citing *Gilmur vs. Seattle*, 124 p. 919.)

Moreover, Ordinance No. 188 transferred the item for thirty-eight (38) detectives to the patrolmen division, but, it did not particularize what positions, from among the seventy-one (71) detectives then in the service, were to be affected by the transfer. Respondents seemingly assume that the power to identify said positions has been given to the Mayor. This would imply, however, a grant of blanket authority to the local executive, without any qualification or standard whatsoever to guide him in the exercise of such authority or to indicate the limits thereof. Thus, respondents' pretense is premised upon a supposed delegation of legislative power which even if meant to be made would be undue and illegal.

Assuming, however, that Ordinance No. 188 proposed to abolish the positions of thirty-eight (38) detectives whose items were transferred to the division of patrolmen, what was the reason therefor?

It will be recalled that, in 1953, the Mayor of Cebu City dismissed a good many members of the secret service force thereof, upon the theory that they held primarily confidential positions, from which they could be ousted at the pleasure of the Mayor. Most of the detectives concerned contested judicially the action of the Mayor, and some of these suits reached the Supreme Court which consistently sustained the contestants, nullified their dismissal and ordered their reinstatement. The first decision of this Court thereon was rendered on October 30, 1953, in *Rodriguez vs. Del Rosario* (supra), which was followed, on February 26, 1954, in *Mission, et al. vs. Del Rosario, et al.* (supra). As a consequence, the Court of First Instance of Cebu was constrained to adhere to these precedents, in its following cases, namely: Civil Case No. R-3153, entitled, "*Saavedra vs. Del Rosario*," decided on March 22, 1954; Civil Case No. R-3161, entitled "*Miguel Cabaral vs. Del Rosario*", decided on November 26, 1954; and Civil Case No. R-3214, entitled "*Jose Almeda vs. Del Rosario*", decided on December 20, 1954. The detectives in whose favor these decisions had been rendered had to be, and were, reinstated, as directed thereon. Less than two (2) months after the rendition of the last decision, or on February 9, 1955, Municipal Ordinance No. 188 was approved, with the item transferring the appropriation for thirty-eight (38) detectives, at P1,440 per annum each, to the division of patrolmen, this transfer to take effect retroactively on July 1, 1954.

Why was this transfer made? Was it because the police force needed more patrolmen, as respondents say? Such could not be the reason, because the chief of police could have assigned thirty-eight (38) detectives to the uniformed division, without an amendment to the city budget. As correctly stated by the City Treasurer of Cebu,

whose opinion is invoked by respondent City Mayor:

"The chief of police may assign any member of the police force including detectives to any duty whenever the exigency of the service so demands, and where in his judgment it is for the good of public service. He has control and supervision of the detectives, he may assign them to any duty under his department." (See Annex 5 to respondent's answer.)

In fact, pursuant to section 32 of Commonwealth Act No. 58, said chief of police has "charge of the police department and everything pertaining thereto, including the * * * disposition of the city police and detective force." Thus, for instance, on May 16, and 21, 1956, former detectives Julian Bercede, Celestino Bigno, Lamberto Morre, Emilio Pardinilla and Enrique Pareja, who, like petitioners herein, had been given termination orders, after accepting appointments as patrolmen, in the uniformed division, were reassigned by the Chief of Police of Cebu City to the secret service division, together with patrolmen Patricio Cabalda, Terencio Garciano and Manuel Lucenario, despite the fact that, under Ordinance No. 188, their items belong to the uniformed division of said department (see Annexes L and L-1 to L-3, to the amended petition).

Was the transfer of item in question made in Ordinance No. 188 because respondent City Mayor felt that the need of additional patrolmen was more or less permanent? Neither could this be the true reason therefor, because said City Mayor may transfer the necessary number of detectives from the secret division to the uniformed division, under section 9 (e) of Commonwealth Act No. 58, reading:

"* * * The Mayor may, in the interest of the service and with the approval of the Secretary of Interior first had, transfer officers and employees not appointed by the President of the Philippines from one section, division or service to another section, division or service within the same department, without changing the compensation they receive."

Thus, the enactment of an Ordinance is, and was, unnecessary, either to detail temporarily, or to transfer permanently, a member of the secret service division to the uniformed division of the Police Department of the City of Cebu. At the same time, the officers of said city must be aware of this, not only because they are presumed to be familiar with the Charter thereof, but, also, because said officers have the services of a City Fiscal and a staff of lawyers to advise them thereon. Now, then, if knowing that, in order to increase the number of patrolmen, by shifting to the uniformed division the corresponding number of detectives, an ordinance is unnecessary, what other purpose could Ordinance No. 188 have had in providing for the transfer of item in question on the assumption that the same involves an abolition of positions than to cloak a device to remove its incumbents (in whom the City Mayor had allegedly lost confidence) and to circumvent the constitutional and statutory provisions tending to protect their tenure of office, as well as to defeat the final judicial decrees directing the reinstatement of petitioners herein, which must have caused no little embarrassment to the city officers concerned? In such case, the pertinent provision of Municipal Ordinance No. 188 would be null and void.

"But where an ordinance purporting to abolish such an office is only a device for the purpose of removing the incumbent while the office practically still remains in existence, it is an evasion of the law, and void." (43 C.J. sec. 978, p. 600.)

"But the right to abolish an unnecessary position cannot be used to conceal the discharge of an employee in violation of the civil service law or to circumvent the effect of a decree of the court restraining the city from removing the incumbent." (43 C. J. sec. 979, p. 600.)

"* * * Tenure of office statutes and civil service statutes do not prevent a bona fide abolition of the office by the municipality. Moreover, statutes to protect the tenure of office of veteran soldiers and sailors will not prevent the abolition of municipal offices. In such cases, however, the office must be abolished in good faith; and if immediately after the office is abolished another office is created with substantially the same duties and

a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will interfere." (37 Am. Jur., 858; italics ours.)

Indeed, the item in dispute could not have been prompted by the demands of public service, for the communication to the City Mayor of Cebu, attached to respondents' answer as Annex 1, shows that the Acting Chief of Police of Cebu City considered that the strength of his secret service division-including the thirty-eight (38) positions of detectives involved in this case-was not sufficient, and that "there is need of having more secret servicemen to take charge of the preventive phase" of the police work in said City. In other words, instead of more patrolmen, what the police department needed was more detectives. This explains why, after the appointment of detectives Bercede, Bigno, Morre, Pardinilla and Pareja as patrolmen, they had to be reassigned to the secret service division, together with patrolmen Cabalda, Garciano and Lucenario.

Wherefore, judgment is hereby rendered declaring that the positions held by petitioners herein on and before May 15, 1956, were not abolished by Municipal Ordinance No. 188; that petitioners were entitled to remain in office, after said date; that they should be reinstated to their aforementioned positions and allowed to continue holding the same, with all rights appurtenant thereto, in accordance with law; and that they are entitled to collect the corresponding compensation from May 16, 1956, with costs against respondent City Mayor. It is so ordered.

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

[*]94 Phil., 483.

[*]93 Phil., 1070.

[*]94 Phil., 903, 50 Off. Gaz., 2515.

[*]94 Phil., 732, 50 Off. Gaz., [7], 3100.

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