

**EDITHA H. CANONIGO, PETITIONER, VS. COURT OF APPEALS,
PATERNO C. BELCIÑA, JR., HERMENIGILDO MERCADO, FELICITO
ANICETO, OCTAVIO QUIJOTE, AND REGIONAL TRIAL COURT BR. 8,
CEBU CITY...**

G.R. No. 111144. July 18, 2002

Ponente: CORONA, J.

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CORONA, J.:

This is an appeal by certiorari under Rule 45 to annul and set aside the Decision of the Court of Appeals[1] which reversed the Decision of the trial court ordering, among others, the reinstatement of petitioner Editha H. Canonigo as Administrative Officer II of the Minglanilla District Hospital (MDH).

Pursuant to Executive Order No. 119 providing for the reorganization of the entire government bureaucracy, the Department of Health issued Special Order 696-A[2] dated 25 September 1987 for the reshuffling of some field office personnel and reassignment to other field offices.

An administrative officer of Minglanilla District Hospital since her appointment to said position on 11 July 1985, petitioner Canonigo was served on 1 October 1987 a copy of Special Order 696-A, signed by respondent Aniceto as regional health director, directing her to report to her new assignment effective upon receipt thereof in Badian District Hospital (BDH), Badian, Cebu, which is about 83 kilometers from her family home and the Minglanilla District Hospital. In her stead, respondent Quijote was appointed as the new administrative officer of MDH.

With a heavy heart, petitioner reported to her new place of assignment but not without first confronting respondents on the propriety of her transfer and at the same time elevating the matter to the [Secr]etary of Health, through a letter-protest[3] dated 26 October 1987, citing as reason the great distance between the new place of assignment and her home which prevented her from taking care of a sickly daughter.

In an indorsement-letter dated 26 April 1988, respondent Belciña, as chief of the Minglanilla District Hospital, noted that he, together with the previous chief of the hospital, recommended petitioner's transfer before the Re-organization Committee (composed of the Assistant Provincial Health Officer as Chairman and the Chiefs of the District Hospital as members) after pointing out that her inexperience in personnel and supply management functions necessitated her transfer to a hospital with a smaller district catchment area.[4]

Repeated demands upon respondents by petitioner for her reinstatement to the Minglanilla District Hospital were refused notwithstanding a series of legal opinions dated 6 July 1988 and 2 September [1988[5]] by the legal division of the DOH in Region VII and despite the intercession of the [Secr]etary of Justice[6] and the Provincial Governor[7] of Cebu for her retention.

On 21 April 1989, petitioner filed a petition for mandamus and damages before the trial court against respondents Belciña, Mercado, Aniceto and Quijote[8] alleging, among others, that she was transferred without prior notice thus depriving her of her constitutional right to due process. Petitioner also decried her transfer to BDH by

respondents despite the findings of the Committee/Team of the Regional Health Office No. 7 which recommended her retention in her former place of assignment.

On the other hand, respondents countered that respondent Quijote, aside from being qualified, had been an administrative officer for about nine (9) years, ahead of petitioner. Moreover, they pointed out that petitioner had a derogatory record which impelled Director Aniceto to exercise his discretion in appointing Quijote as Administrative Officer of MDH. Belciña added that he was assigned to the MDH as officer-in-charge only in 1986, and at that time petitioner was occupying the position of administrative officer. Four (4) months thereafter, the reorganization of the Department of Health under Executive Order 119 was effected and they were notified that all the positions were deemed abolished and that all the services of the personnel were only on a holdover capacity.

The trial court ruled in favor of petitioner Canonigo, directing her reinstatement as Administrative Officer II of MDH, and the removal of respondent Octavio Quijote. Respondent Belciña was also ordered to pay petitioner P100,000.00 as moral damages, P30,000.00 as exemplary damages and P20,000.00 as attorney's fees.[9]

Dissatisfied with the decision, both petitioner and respondents interposed separate appeals therefrom.

Essentially, petitioner contends that the court a quo erred in awarding her grossly inadequate damages and in failing to declare that the liability of respondents was solidary.

Not to be outdone, respondent Belciña filed a separate memorandum on appeal raising as error the order of the lower court to reinstate petitioner Canonigo as Administrative Officer II of MDH, and its decision to single him out, among all the respondent-appellants to pay damages to petitioner.

In their joint appeal, respondents Aniceto, Mercado and Quijote raised the following issues: (a) whether mandamus could prosper against them and in favor of petitioner and (b) whether petitioner was entitled to damages.

On the first issue, the Court of Appeals ruled that mandamus would not lie to control the discretionary act of appointment. It opined that respondent Regional Director Aniceto merely exercised his discretion in appointing respondent Quijote as MDH administrative officer after considering his better qualification and longer experience compared to petitioner's. Besides, according to the appellate court, petitioner was found to have derogatory records of immorality, loan-sharking, failure to perform her primary responsibility as administrative officer and/or committing falsification that were acts inimical to the service.

The Court of Appeals added:[10]

“x x x x As shown by the records, respondent Quijote has been appointed as BDH administrative officer on July 16, 1979 (Exhs. ‘32,’ ‘30-A,’ and ‘31’). His controverted appointment as MDH administrative officer in 1987 is permanent in character (Exhs. ‘32’ and ‘32-A’). On the other hand, petitioner was appointed as MDH administrative officer sometime in August 1985 in a temporary capacity (Exh. ‘40’). Prior thereto, she was merely occupying the positions of bookkeeper and cashier at said hospital and never the position of administrative officer as she testified to (Exh. ‘39’).”

In view of the aforequoted, the appellate court reversed the decision of the trial court and dismissed both the petition and the counterclaim of respondents for lack of basis.

The instant petition hinges on the following assigned errors in the challenged decision of the Court of Appeals, thus: (a) its factual findings do not find adequate support in the evidence both oral and documentary submitted before the trial court; (b) it gravely erred in finding that private respondents were not liable for damages to

petitioner while the trial court gravely erred in awarding a measly sum of P150,000.00 by way of damages to petitioner.

In support of the first assigned error, petitioner contends that contrary to the statement in the decision that it was the provincial reorganization committee which initiated the reshuffling of administrative officers including petitioner, it was in fact the Monitoring Team of the DOH in Region VII which made the recommendation and it was the same team that incidentally recommended the retention of petitioner in her controverted post after finding the records of her performance impressive.[11]

The allegation that petitioner did not protest her transfer to BDH is belied by the records. She claims that upon receipt of Special Order No. 696-A ordering her transfer to MDH, she immediately protested to respondents Belciña, Mercado, and Aniceto. In addition, petitioner filed a letter-protest to the [Secr]etary of Health, Hon. Alfredo Bengzon,[12] and to Dr. Tomas P. Maramba, Jr.,[13] Chairman of the Committee on Protest, at the Department of Health.

On the matter of whether mandamus was available to her, petitioner answers in the affirmative for the reason that respondents had no discretion to transfer her, a permanent employee, to BDH without notice, valid reason and hearing. On this basis, it is therefore ministerial for respondents to return petitioner to her original assignment, i.e., Minglanilla District Hospital.

Explicit in Executive Order 119 is the injunction by the government to carry out the reorganization of the Department of Health (then Ministry of Health) with the conscious effort at giving utmost importance to the qualifications of the personnel. Thus [Sec.] 25, par. c of Executive Order 119 states:

“Designations to the positions in the Ministry shall not be limited to the incumbent of the positions where there are others more qualified in other units of the Ministry.”

Its Implementing Rules set forth certain procedural requirements for its performance such as notice on the reappointment and nonreappointment of personnel, letter forms of notification to be signed by specified officials, and the administrative remedies.

A Memorandum dated 2 October 1987 by then President Corazon C. Aquino to all the heads of government departments and agencies (re: Guidelines on the Implementation of Reorganization Executive Orders) stated:

“x x x it is my concern that the on-going process of government reorganization be conducted in a manner that is expeditious as well as sensitive to the dislocating process arising from specific personal decisions - that the entire process must be carried out in the most humane manner possible. Reorganization must be more open and transparent.”[14]

Parameters were therefore not wanting to guide the department heads in carrying out their assigned task of reorganizing their respective departments.

Were these observed? Hardly. Gleaned from the letter[15] of Assistant Provincial Health Officer Ulysses Dakay dated 23 January 1987, the reshuffling of the hospital administrative officers should be based on performance. The pertinent portion of that letter is quoted as follows:

“In line with rebuilding the backbone of the Ministry of Health, the Committee on Reorganization, composed of all chiefs of hospital have collectively discussed the performance of Administrative Officers x x x x”

The same letter recommended the transfer of petitioner from Minglanilla District Hospital to Badian District Hospital.

It is crystal clear therefore that performance was the cornerstone for the reshuffling of the hospital employees. If

this be so, then there was not enough basis for uprooting petitioner from her place of assignment. The documents submitted by petitioner as evidence show that she consistently earned a “Very Satisfactory” rating in the Performance Target Worksheet as attested to by respondent Belciña himself.[16] The Reorganization Monitoring Team headed by Dr. Henry Calledo as chairman, apparently satisfied with her performance, also recommended her retention as Administrative Officer II of MDH.[17]

The excuse of respondent Aniceto that his decision to appoint Quijote to the position then occupied by petitioner was due to the derogatory information received by his office against petitioner has no merit. The alleged derogatory information was an issue never adverted to previously. It obviously sprouted only as an afterthought to justify an arbitrary decision.

More revealing is the statement by respondent Belciña in his Indorsement letter dated 26 April 1988 questioning the authenticity of the performance rating submitted by petitioner in view of its supposed late filing which precluded his office from verifying the same. Respondent Belciña must have forgotten that he himself signed the report. If at all, it was more of an indictment of his proficiency as chief of the hospital than petitioner’s alleged inexperience. One can only wonder how respondents could have come up with a finding of petitioner’s alleged inexperience after having failed to take into account vital records concerning her performance as an employee.

More importantly, the records show that on 11 July 1985 petitioner was permanently appointed as a Hospital Administrative Officer II, Range 64 in the Minglanilla District Hospital.[18] Clearly, the transfer of petitioner without her consent was arbitrary for it was tantamount to removal without cause, and therefore invalid as it was violative of her [secu]rity of tenure. When petitioner was extended a permanent appointment on 11 July 1985, and she assumed the position, she acquired a legal right to the position. Such right cannot be taken away from her either by removal, transfer or by revocation of appointment, except for cause. The guarantee of [secu]rity of tenure is an important cornerstone of the civil service system because it [secu]res for a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal reprisals.

Pertinent is the pronouncement of this Court in *Divinagracia, Jr. vs. Sto. Tomas*,[19]-

“x x x A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to ‘lure the employee away from his permanent position, cannot be done without the employees’ consent. For that would constitute removal from office.

”x x x Concededly there are transfers which do not amount to removal. Some such transfers can be effected without the need for charges being proffered, without trial and hearing, and even without the consent of the employee x x x x The clue to such transfers may be found in the ‘nature of the appointment.’ Where the appointment does not indicate a specific station, an employee may be transferred or assigned provided the transfer affects no substantial change in title, rank and salary x x x x Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of the agency to periodically reassign the employees and officers in order to improve the service of the agency x x x x Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him; or to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to [Sec.] 32 of the Civil Service Act.”

Furthermore, in *Quisumbing vs. Judge Gumban*,[20] we declared that an “illegal transfer is tantamount to removal without cause, except when an officer is appointed ‘at large’ in which case he may be assigned or transferred to any station, as he is not entitled to stay permanently at any specific station.”

A final word. Reorganization should not be used as a tool to take unconscionable and unscrupulous advantage of another, its *raison d’être* being to make the bureaucracy more effective and efficient.

Insofar as the civil liability is concerned, we agree with the trial court that there is sufficient factual and legal basis to hold respondent Belciña liable. It was established that respondent Belciña alone had the reason to be motivated maliciously. It was shown that petitioner's relationship with respondent Belciña, then the chief of hospital of MDH, turned from bad to worse when petitioner began exposing the anomalies purportedly committed by Belciña. Because of irreconcilable differences, petitioner Canonigo was first relieved as supply and procurement officer on 5 October 1987, then as a member of the Bidding and Awards Committee on 8 August 1987, and finally as a signatory to the vouchers.

We are not inclined to believe respondent Belciña's justification that the transfer of petitioner to BDH was the result of the collective decision of the Reorganization Committee. This is not true because even the unanimous recommendation of the monitoring team was for her retention as administrative officer of Minglanilla. Dr. Beduya, former chief of the MDH, and a member of the reorganization committee denied in a certification[21] that he had anything to do with the decision to transfer petitioner. Moreover, as testified to by petitioner, respondent Belciña's hostility towards her began to manifest itself the last week of February 1987, when she started questioning his anomalous transactions[22] - a drastic departure from Belciña's friendly attitude before she made the exposes when said respondent himself recommended her retention.

On the other hand, we do not discern bad faith or malice on the part of respondents Mercado, Aniceto and Quijote. By all indications, respondents Mercado, as Provincial Health Officer, and Aniceto, as Regional Director of Health Region 7, acted in their official capacities with no malice aforethought. The rule is that a public officer is not liable for moral or exemplary damages for performing a duty required by law in the absence of bad faith. For his part, respondent Quijote merely acted by virtue of an order by a superior authority.

We also find sufficient the trial court's justification on the amount of damages and are not disposed to disturb the same.

WHEREFORE, the Decision of respondent Court of Appeals dated 10 February 1993 is REVERSED and SET ASIDE while the Decision of the Regional Trial Court, Br. 8, Cebu City, dated 20 September 1990 (1) directing the reinstatement of petitioner Editha H. Canonigo as Administrative Officer II of the Minglanilla District Hospital (MDH) and the removal of respondent Octavio Quijote, incumbent administrative officer, and (2) ordering respondent Paterno Belciña to pay petitioner P100,000.00 as moral damages, P30,000.00 as exemplary damages, P20,000.00 as attorney's fees and finally, the costs, is REINSTATED and AFFIRMED in toto.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.

[1] Decision penned by Associate Justice Nicolas Lapeña, concurred in by Associate Justices Nathanael P. De Pano and Ma. Alicia Austria-Martinez. (now Associate Justice of the Supreme Court).

[2] Petition, Annex "CC", Rollo, p. 203.

[3] Petition, Annex "DD", Rollo, pp. 204-205.

[4] 4th Indorsement, 26 April 1988, Exhibit "AA-6."

[5] Petition, Annexes "II"; "II-1", Rollo, pp. 244-249.

[6] Petition, Annex "FF", Rollo, pp. 234.

[7] Petition, Annex "GG", Rollo, pp. 239.

[8] Petition, Annex “JJ”, Rollo, pp. 255-261. In the petition for mandamus, the following were impleaded as respondents: 1. Dr. Paterno Belciña, Chief Minglanilla District Hospital; 2. Dr. Hermenegildo Mercado, Provincial Health Officer; 3. Dr. Felicito Aniceto, Director, Regional Health Office No. 7, Cebu City; 4. Octavio Quijote, Minglanilla District Hospital, Cebu.

[9] Decision by Judge Bernardo LL. Salas, RTC-Br. 8, Cebu City, promulgated 20 September 1990. Petition, Annex “C”, Rollo, pp. 73-107.

[10] Rollo, pp. 60-61.

[11] Petition, Annex “P-1”, Rollo, p. 182.

[12] Petition, Annex “DD”, Rollo, pp. 204-205.

[13] Petition, Annex “EE”, Rollo, pp. 222-227.

[14] Petition, Annex “OOOO”, Rollo, p. 577.

[15] Petition, Annex “Q”, Rollo, p. 183.

[16] Petition, Annexes “R” to “T” with submarkings, Rollo, pp. 184-189.

[17] See Note No. 11.

[18] Exhibit “B-13”.

[19] 244 SCRA 595, 607 (1995).

[20] 193 SCRA 520, 523 (1991) citing DECS vs. Court of Appeals, 183 SCRA 555, 561-562 (1990); Brillantes vs. Guevarra, 27 SCRA 138, 144 (1969).

[21] Exhibit “P-7-C”.

[22] Rollo, pp. 96-101.

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