

ACHILLES C. BERCES, SR., PETITIONER, VS. HON. EXECUTIVE SECRETARY TEOFISTO T. GUINGONA, JR., CHIEF PRESIDENTIAL LEGAL COUNSEL ANTONIO CARPIO AND MAYOR NAOMI C. CORRAL OF TIWI, A...

G.R. No. 112099. February 21, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court with prayer for mandatory preliminary injunction, assailing the Orders of the Office of the President as having been issued with grave abuse of discretion. Said Orders directed the stay of execution of the decision of the Sangguniang Panlalawigan suspending the Mayor of Tiwi, Albay from office:

I

Petitioner filed two administrative cases against respondent Naomi C. Corral, the incumbent Mayor of Tiwi, Albay with the Sangguniang Panlalawigan of Albay, to wit:

(1) Administrative Case No. 02-92 for abuse of authority and/or oppression for non-payment of accrued leave benefits due the petitioner amounting to P36,779.02.

(2) Administrative Case No. 05-92 for dishonesty and abuse of authority for installing a water pipeline which is being operated, maintained and paid for by the municipality to service respondent's private residence and medical clinic.

On July 1, 1993, the Sangguniang Panlalawigan disposed the two Administrative cases in the following manner:

"(1) Administrative Case No. 02-92

ACCORDINGLY, respondent Mayor Naomi C. Corral of Tiwi, Albay, is hereby ordered to pay Achilles Costo Berces, Sr. the sum of THIRTY-SIX THOUSAND AND SEVEN HUNDRED SEVENTY-NINE PESOS and TWO CENTAVOS (P36,779.02) per Voucher No. 352, plus legal interest due thereon from the time it was approved in audit up to final payment, it being legally due the Complainant representing the money value of his leave credits accruing for services rendered in the municipality from 1988 to 1992 as a duly elected Municipal Councilor. IN ADDITION, respondent Mayor NAOMI C. CORRAL is hereby ordered SUSPENDED from office as Municipal Mayor of Tiwi, Albay, for a period of two (2) months, effective upon receipt hereof for her blatant abuse of authority coupled with oppression as a public example to deter others similarly inclined from using public office as a tool for personal vengeance, vindictiveness and oppression at the expense of the Taxpayer" (Rollo, p. 14).

"(2) Administrative Case No. 05-92.

WHEREFORE, premises considered, respondent Mayor NAOMI C. CORRAL of Tiwi, Albay, is hereby sentenced to suffer the penalty of SUSPENSION from office as Municipal Mayor thereof for a period of

THREE (3) MONTHS beginning after her service of the first penalty of suspension ordered in Administrative Case No. 02-92. She is likewise ordered to reimburse the Municipality of Tiwi One-half of the amount the latter have paid for electric and water bills from July to December 1992, inclusive" (Rollo, p. 16).

Consequently, respondent Mayor appealed to the Office of the President questioning the decision and at the same time prayed for the stay of execution thereof in accordance with Section 67(b) of the Local Government Code, which provides:

"Administrative Appeals. - Decision in administrative cases may, within thirty (30) days from receipt thereof, be appealed to the following:

xxx xxx xxx

(b) The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panglungsod of highly urbanized cities and independent component cities."

Acting on the prayer to stay execution during the pendency of the appeal, the Office of the President issued an Order on July 28, 1993, the pertinent portions of which read as follows:

x x x x x x x x

"The stay of execution is governed by Section 68 of R.A. No. 7160 and Section 6 of Administrative Order No. 18 dated 12 February 1987, quoted below:

'SEC. 68. Execution Pending Appeal. - An appeal shall not prevent a decision from becoming final or executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal (R.A. No. 7160).

'SEC. 6. Except as otherwise provided by special laws, the execution of the decision/resolution/order appealed from is stayed upon the filing of the appeal within the period prescribed herein. However, in all cases, at any time during the pendency of the appeal, the Office of the President may direct or stay the execution of the decision/resolution/order appealed from upon such terms and conditions as it may deem just and reasonable (Adm. Order No. 18).' "

x x x x x x x x

"After due consideration, and in the light of the Petition for Review filed before this Office, we find that a stay of execution pending appeal would be just and reasonable to prevent undue prejudice to public interest.

"WHEREFORE, premises considered, this Office hereby orders the suspension/stay of execution of:

a) the Decision of the Sangguniang Panlalawigan of Albay in Administrative Case No. 02-92 dated 1 July 1993 suspending Mayor Naomi C. Corral from office for a period of two (2) months, and

b) the Resolution of the Sangguniang Panlalawigan of Albay in Administrative Case No. 05-92 dated 5 July 1993 suspending Mayor Naomi C. Corral

from office for a period of three (3) months" (Rollo, pp. 55-56).

Petitioner then filed a Motion for Reconsideration questioning the aforesaid Order of the Office of the President.

On September 13, 1990, the Motion for Reconsideration was denied.

Hence, this petition.

II

Petitioner claims that the governing law in the instant case is R.A. No. 7160, which contains a mandatory provision that an appeal "shall not prevent a decision from becoming final and executory." He argues that Administrative Order No. 18 dated February 12, 1987, (entitled "Prescribing the Rules and Regulations Governing Appeals to the Office of the President") authorizing the President to stay the execution of the appealed decision at any time during the pendency of the appeal, was repealed by R.A. No. 7160, which took effect on January 1, 1991 (Rollo, pp. 5-6).

The petition is devoid of merit.

Petitioner invokes the repealing clause of Section 530(f), R.A. No. 7160, which provides:

"All general and special laws, acts, city charters, decrees, executive orders, administrative regulations, part or parts thereof, which are inconsistent with any of the provisions of this Code, are hereby repealed or modified accordingly."

The aforementioned clause is not an express repeal of Section 6 of Administrative Order No. 18 because it failed to identify or designate the laws or executive orders that are intended to be repealed (cf. *I Sutherland*, *Statutory Construction* 467 [1943]).

If there is any repeal of Administrative Order No. 18 by R.A. No. 7160, it is through implication though such kind of repeal is not favored (*The Philippine American Management Co., Inc. v. The Philippine American Management Employees Association*, 49 SCRA 194 [1973]). There is even a presumption against implied repeal.

An implied repeal predicates the intended repeal upon the condition that a substantial conflict must be found between the new and prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws (*Iloilo Palay and Corn Planters Association, Inc. v. Feliciano*, 13 SCRA 377 [1965]). The two laws must be absolutely incompatible (*Compania General de Tabacos v. Collector of Customs*, 46 Phil. 8 [1924]). There must be such a repugnancy between the laws that they cannot be made to stand together (*Crawford*, *Construction of Statutes* 631 [1940]).

We find that the provisions of Section 68 of R.A. No. 7160 and Section 6 of Administrative Order No. 18 are not irreconcilably inconsistent and repugnant and the two laws must in fact be read together.

The first sentence of Section 68 merely provides that an "appeal shall not prevent a decision from becoming final or executory." As worded, there is room to construe said provision as giving discretion to the reviewing officials to stay the execution of the appealed decision. There is nothing to infer therefrom that the reviewing officials are deprived of the authority to order a stay of the appealed order. If the intention of Congress was to repeal Section 6 of Administrative Order No. 18, it could have used more direct language expressive of such intention.

The execution of decisions pending appeal is procedural and in the absence of a clear legislative intent to remove from the reviewing officials the authority to order a stay of execution, such authority can be provided in the rules and regulations governing the appeals of elective officials in administrative cases.

The term "shall" may be read either as mandatory or directory depending upon a consideration of the entire provision in which it is found, its object and the consequences that would follow from construing it one way or the other (cf. *De Mesa v. Mencias*, 18 SCRA 533 [1966]). In the case at bench, there is no basis to justify the construction of the word as mandatory.

The Office of the President made a finding that the execution of the decision of the Sangguniang Panlalawigan

suspending respondent Mayor from office might be prejudicial to the public interest. Thus, in order not to disrupt the rendition of service by the mayor to the public, a stay of the execution of the decision is in order.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

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