

RODOLFO GANZON, PETITIONER AND APPELLANT, VS. UNION C. KAYANAN, RESPONDENT AND APPELLEE.

G. R. No. 11336. August 30, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On August 25, 1956, Ernesto V. Rosales lodged a verified complaint against petitioner with the President reading as follows:

"Complainant Ernesto V. Rosales most humbly and respectfully submits to the President of the Philippines, Ramon Magsaysay, for investigation and appropriate action, the following administrative charges against the respondent Rodolfo Ganzon incumbent Mayor of Iloilo City, which charges are:

Count 1. That on August 22, 1956 the respondent taking advantage of his public position as Mayor of Iloilo City and accompanied by his armed body-guards and henchmen, stormed into the broadcasting station of DYRI of Iloilo City, and with violence and intimidation, unjustifiably and unlawfully stopped the radio-press interview program 'People's Forum' of said station, thus, suppressing and curtailing for about a quarter hour the complainant's right to free speech, the radio station's right to broadcast, and the people's right to listen to a radio-press interviews, which acts constitute oppression or unjust exercise of authority or power and/or grave misconduct in office.

Count 2. That during the occurrence of the acts mentioned in Count 1, the respondent Mayor of Iloilo City arrogantly took the law in his Own hands by personally pushing away the microphones and hitting on the back of the neck the complainant, who is a radio commentator and program director of Station DYRI of Iloilo City, and a member of the panel of interrogators of the 'People's Forum', a public service press interview program of said nature, constitutive of oppression and shameful misconduct in office.

Count 3. That during the occurrence of the acts above-stated in Counts 1 and 2, the respondent Mayor of Iloilo City, in a fit of devouring fury, unrestrainedly hurled invectives at the complainant, calling the latter indecent bad-mannered, dammed-no-good-Cebuano who should evacuate to Cebu and other similar names, which verbal acts constituted oppression and oral defamation, highly unbecoming of Iloilo City's supposedly No. 1 public official and model citizen.

In view of the foregoing, the complainant most respectfully prays:

- That an investigation of the administrative charges above specified be ordered by the President of the Philippines, after which the corresponding and proper action be taken against the respondent who has demonstrated his unfitness to continue exercising governmental power; and,
- That in the interest of public welfare and safety, the respondent be immediately suspended from office, so as to prevent the further misuse of authority and power pending such investigation, particularly on witnesses to the above-specified charges."

On September 13, 1956, the Executive Secretary, by authority of the President, designated respondent to conduct

the investigation of said complaint pursuant to the provisions of Section 64 (c) of the Revised Administrative Code granting said respondent all the powers given to an investigating officer by Sections 71 and 580 of the same Code.

On September 18, 1956, respondent served a copy of the complaint on petitioner and set the investigation of the charges on September 20, 1956. Petitioner, having filed a motion for postponement, respondent definitely set the investigation for September 25 and 26, 1956. On September 24, 1956, petitioner instituted in the Court of First Instance of Iloilo an action for prohibition with preliminary injunction questioning the authority of the President to order his investigation and praying that respondent be enjoined to suspend and desist from proceeding with the investigation and that, pending decision of the case on the merits, a preliminary injunction be issued against respondent. On September 26, 1956, the lower court declined to issue the writ and instead set the case for hearing on the merits on September 28, 1956. At the hearing, both parties agreed to admit all the facts set forth in the pleadings and submitted the case for decision. And on October 2, 1956, the lower court rendered decision dismissing the petition. His motion for reconsideration having been denied, petitioner took the present appeal.

The issues posed by petitioner are:

- "1. That the President of the Philippines has no authority under the Constitution or under any law to order the investigation of petitioner-appellant on the charges averred in the administrative complaint for the purpose of suspension and/or removal.
2. That the charges averred in the administrative complaint are penal in nature and the remedies sought for are punitive and/or disciplinary in character;
3. That the charges against petitioner-appellant do not allege acts constituting disloyalty to the Republic of the Philippines as provided for in Section 64(6) of the Revised Administrative Code which is the only ground for the suspension and/or removal of an elective city mayor, and
4. That granting arguendo that the grounds enumerated in Section 2078 of the Revised Administrative Code for the removal of provincial officials are applicable by analogy and/or implication to an elective city mayor, the administrative complaint in question does not allege facts constituting oppression or misconduct in office and dishonesty, much less disloyalty."

The present appeal involves the paramount issue of whether the President of the Philippines has the power and authority under our Constitution and the laws at present in force in this jurisdiction to investigate the mayor of a city and, if found guilty, to take disciplinary action against him as the evidence and law may warrant.

At the outset, it should be stated that petitioner is the duly elected mayor of the City of Iloilo whose charter, speaking of his removal, merely provides that he "shall hold office for six years unless removed" (Section 8, Commonwealth Act No. 158, as amended). The charter does not contain any provision as regards the procedure by which he may be removed. Nevertheless, as this Court has once said, "the rights, duties, and privileges of municipal officers (including city officials) do not have to be embodied in the charter, but may be regulated by provisions of general application specially if these are incorporated in the same code of which the city organic law forms a part" (*Lacson vs. Roque*, 92 Phil., 456; 49 Off. Gaz., No. 1, pp. 93, 97). The code herein referred to is the Revised Administrative Code.

Now, the charter of Iloilo City, as we have already stated, says that the mayor "shall hold office for six years unless removed." It does not say that he shall hold office at the pleasure of the President unlike similar provisions appearing in other city charters. The idea is to give the mayor a definite tenure of office not dependent upon the pleasure of the President. If this were the case, he could be separated from the service regardless of the cause or motive. But when he was given a definite tenure, the implication is that he can only be removed for cause.

"'An inferential authority to remove at pleasure can not be deduced, since the existence of a defined term, ipso facto, negatives such an inference, and implies a contrary presumption, i.e. that the incumbent shall hold office to the end of his term subject to removal for cause.' (State ex rel Gallagher vs. Brown, 57 Mo. Ap., 203, expressly adopted by the Supreme Court in States ex ret. vs. Maroney, 191 Mo. 648; 90 S. W., 141; States vs. Crandell, 269 Mo., 44; 190 S. W., 889; State vs. Salval, 450, 2d, 995; 62 C. J., S., 947,)" (Lacson vs. Roque, supra)

The question that now arises is: Does the President have power and authority to investigate petitioner with a view to his removal under the above provision of the charter of Iloilo City? If so, for what causes may he authorize such investigation?

The pertinent provisions governing the power of the President over local officials, be they provincial, city or municipal, are embodied in Section 64(6) and (c) of the Revised Administrative Code, in connection with the provisions of Section 10, paragraph 1, Article VII of the Constitution. For ready reference, we will hereunder quote said provisions:

"(b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the (United States), the Republic of the Philippines, the (Governor-General) President of the Philippines may at any time remove a person from any position of trust or authority under the Government of the (Philippine Islands) Philippines.

(c) To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted."

"SEC. 10. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

It may clearly be inferred from the above that the President may remove any official in the government service "conformably to law" and to declare vacant the office held by the removed official. And to this end, the President may order "an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official committee, or person by whom such investigation shall be conducted." Note that the provision refers to any official in the government service, which must necessarily include the mayor of a chartered city. It cannot therefore be disputed that in the particular case under consideration the President is vested with the authority to order the investigation of petitioner when in his opinion the good of the public service so requires, and such being the case, petitioner cannot now contend that the designation of respondent as the official to investigate him in connection with the charges lodged against him by Rosales has been done without the authority of law. This of course is upon the premise that the charges involved in the investigation refer to those for which petitioner may be suspended or removed under the law, a question which we will take up later in this decision.

It is true that in the case of *Mondano vs. Silvosa*,* 51 Off. Gaz., No. 6, p. 2884, this Court had occasion to discuss the scope and extent of the power of supervision by the President over local government officials in contrast to the power of control given to him over executive officials of our government wherein it was emphasized that the two terms, control and supervision, are two different things which differ one from the other in meaning and extent. Thus in that case the Court made the following digression: "In administration law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside, what a

subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." But from this pronouncement it cannot be reasonably inferred that the power of supervision of the President over local government officials does not include the power of investigation when in his opinion the good of the public service so requires, as postulated in Section 64 (e) of the Revised Administrative Code. In fact, this matter has been clarified when, in a subsequent case, this Court made the following pronouncement:

"In conclusion, we hold that, under the present law, the procedure prescribed in sections 2188 to 2191 of the Revised Administrative Code, for the suspension and removal of municipal officials therein referred to, is mandatory; that, in the absence of a clear and explicit provision to the contrary, relative particularly to municipal corporations—and none has been cited to us—said procedure is exclusive; that the executive department of the national government, in the exercise of its general supervision over local government, may conduct investigations with a view to determining whether municipal officials are guilty of acts or omissions warranting the administrative action referred to in said sections, as a means only to ascertain whether the provincial governor and the provincial board should take such action; that the Executive may take appropriate measures to compel the provincial governor and the provincial board to take said action, if the same is warranted, and they failed to do so; that the provincial governor and the provincial board may not be deprived by the Executive of the power to exercise the authority conferred upon them in sections 2188 to 2190 of the Revised Administrative Code; that such would be the effect of the assumption of those powers by the Executive; that said assumption of powers would further violate section 2191 of the same Code, for the authority therein vested in the Executive is merely appellate in character; that, said assumption of powers, in the case at bar, even exceeded those of the Provincial Governor and Provincial Board, in whom original jurisdiction is vested by said sections 2188 to 2190, for, pursuant thereto, 'the preventive suspension of a municipal officer shall not be for more than thirty (30) days, at the expiration of which he shall be reinstated, unless the delay in the decision of the case is due to his fault, neglect or request, or unless he shall have meanwhile been convicted, whereas petitioner herein was suspended 'until the final determination of the proceedings' against him, regardless of the duration thereof and the cause of the delay in its disposition; and that so much of the rule laid down in *Villena vs. Secretary of the Interior* (67 Phil., 451) and *Villena vs. Roque* (93 Phil., 363), as may be inconsistent with the foregoing views, should be deemed, and are hereby reversed or modified accordingly." (*Hebron vs. Reyes*, supra, p. 175; Italics supplied)

The final question to be determined is: For what cause or causes may the President order the investigation of petitioner "conformably to law?"

For this, suffice it to quote hereunder what we have said in *Lacson vs. Rogue*, supra:

"Four Justices who join in this decision do not share the view that the only ground upon which the Mayor may be expelled is disloyalty. The Chief Justice, Mr. Justice Padilla and Mr. Justice Jugo, three of the Justices referred to, reason that, as the office of provincial executive is at least as important as the office of mayor of the City of Manila, the latter officer, by analogy, ought to be amenable to removal and suspension for the same causes as provincial executives, who under Section 2078 of the Revised, Administrative Code, may be discharged for dishonesty, oppression, or misconduct in office, besides disloyalty."

And Chief Justice Paras, in concurring in the foregoing opinion, made the following interesting observation:

"It is hard and illogical to believe that, while there are express legal provisions for the suspension and removal of provincial governors and municipal mayors, it could have been intended that the mayor of Manila should enjoy an over-all immunity or sacrosanct position, considering that a provincial governor or municipal mayor may fairly be considered in parity with the city mayor insofar as they are all executive heads of political subdivisions. Counsel for petitioner calls attention to the fact that the peculiarly elevated standard of the City of Manila and its populace might have prompted the lawmakers to exempt the city mayor from removal or suspension. Much can be said about the desirability of making the executive head of Manila as strong and independent as possible but there should not be any doubt that awareness of the insistence of some sort of

disciplinary measures has a neutralizing and deterring influence against any tendency toward officials' misfeasance, excesses or omission."

Considering that the position of mayor of a chartered city may be fairly compared in category and stature with that of a provincial governor, we are of the opinion that the former, by analogy, may also be amenable to removal and suspension for the same causes as the latter, which causes, under Section 2078 of the Revised Administrative Code, are: disloyalty, dishonesty, oppression and misconduct in office. And considering the allegations in the complaint to the effect that petitioner took advantage of his public position as mayor of Iloilo City in committing the acts of violence and intimidation upon respondent in order to stop the radio program he was then conducting in his station thus suppressing and curtailing his right to free speech, we are of the opinion that said acts constitute misconduct in office for which he may be ordered investigated by the President within the meaning of the law. There is therefore no plausible reason to disturb the decision rendered by the lower court which we find to be in accordance with law.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

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

*97 Phil., 143.

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