

EMILIO B. ALLER, PETITIONER AND APPELLANT, VS. SERGIO OSMEÑA, JR., AS FORMER PROVINCIAL GOVERNOR, PEDRO UY CALDERON, AS ACTING PROVINCIAL GOVERNOR, THE PROVINCIAL BOARD OF CEBU,...

G. R. No. 12168. February 28, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu dismissing the action of petitioner for the recreation of his position and his reinstatement therein on the ground that the complaint was filed almost three years after the suppression of his position and his removal from service.

It appears from the pleadings that petitioner was appointed clerk in the office of the Provincial Auditor of Cebu on January 1, 1951, he being a first grade civil service eligible. On August 31, 1952 his position was abolished by the Provincial Board, allegedly in bad faith and for political reasons, and his services terminated. He filed his complaint on September 27, 1955, praying that his position be recreated and that he be reinstated in this position. Former Governor Osmeña filed an answer, denying that the abolition of petitioner's position by the Provincial Board was made in bad faith and alleging that said abolition was effected in pursuance of a policy of retrenchment. Similar answer was filed by the Provincial Auditor, who further alleged that the abolition of petitioner's position was made with the approval of the Secretary of Finance and that petitioner has no cause of action, no appeal having made previously to the Auditor-General and to the President of the Philippines. Pending trial of the case, respondents moved to dismiss the action on the ground that the action was not filed within one year. The court below granted this motion, and upon its refusal to reconsider the order of dismissal, appeal was made to this Court. In this Court a motion to dismiss has been filed on the additional ground that the province of Cebu has not been made a party defendant.

The motion for dismissal for failure of petitioner-appellant to include the province of Cebu as a party respondent is well founded. (*Cabanes vs. Rodriguez*, G. R. No. L-9799, prom. May 31, 1957). Another ground for dismissal is the failure of petition to state a cause of action, it appearing that the former position occupied by petitioner-appellant has been abolished with the approval of the Secretary of Finance.

The judgment appealed from is hereby affirmed, with costs against petitioner. So ordered.

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

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