

SOLOMON A. MAGANA, PETITIONER AND APPELLANT, VS. AUDITOR GENERAL MANUEL AGREGADO, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 12180. April 29, 1960*

Ponente: PARAS, C.J.

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On November 10, 1956, the petitioner filed in the Court of First Instance of Manila a petition for certiorari against the respondents, alleging that the petitioner was a first grade civil service eligible; that he had rendered continuous service from June 1, 1922 to June 30, 1954, when he was removed by the respondents from his position of Field Auditor at P3,120 per annum as an economy measure; that immediately thereafter he unsuccessfully exhausted all administrative remedies; that effective July 13, 1956, he was offered and did accept with reservations the position of Inspector in the Office of the Auditor in the respondent NAMARCO at P2,400 per annum. The petitioner prayed for the payment of all salaries and privileges withheld as a result of his allegedly illegal ouster on June 30, 1954, and his reinstatement in the service at a lower salary, plus moral damages in the sum of P20,000. On January 2, 1957, on respondents' motion to dismiss on the grounds that the petition failed to state a valid and good cause of action and that it alleged facts showing that the petitioner was guilty of laches or estoppel, said petition was dismissed. His motion for reconsideration having been denied, the petitioner has appealed.

The petitioner contends that the lower court erred in availing itself of facts not appearing on the face of the petition and in arriving at illogical conclusions. We do not agree, because all the findings of the lower court may be gathered from the petition and its annexes. (See pars. 4-6; par. 3 of prayer.) Annex "B" attests to the fact that appellant's position was abolished, and Annex "H" shows that the measure was in consonance with the reorganization program of the new administration and its policy of economy. Consideration by the court of the annexes was proper, since their principal purpose was to support and explain the allegations in the petition.

The records further demonstrate that the petitioner has enjoyed his unused vacation and sick leave and received the gratuity under the conditions of Board Resolution No. 1 dated April 1, 1954, as amended by the Board Resolution No. 372, dated June 8, 1954. Having accepted the benefits accruing from the abolition of his office, he is estopped from questioning its validity or deemed to have waived the right to contest the same. This was the ruling in the case of *Lopez vs. Board of Directors, et al.*, 101 Phil., 349; 54 Off. Gaz. (9) 2900.

The fact that the appellant had made a reservation (regarding the prosecution of the present case) in his acceptance of the new position in the NAMARCO is of no moment, because, as observed by the lower court, once a government employee accepts a new position, he loses his right to the old office. Moreover, an appointee cannot impose his own conditions for the acceptance of a public office. He may accept or decline it.

The order appealed from is accordingly affirmed with costs against the appellant. So ordered.

Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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