

DAMASO DISCANSO AND FLORENCIO VALIENTE, PETITIONERS AND APPELLEES, VS. FELICISIMO GATMAYTAN, MUNICIPAL TREASURER, GUIMBA, NUEVA ECIJA, RESPONDENT AND APPELLANT.*G.R. No. 12226. October 31, 1960*

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12226/>**PAREDES, J.:**

Petitioners-appellees Damaso Discanso and Florencio Valiente, were policemen of the municipality of Guimba, Nueva Ecija, who were removed from office, in 1952, by the then Acting Mayor Dr. Virgilio V. Calica. Appellees instituted Mandamus proceedings (Special Civil Action No. 1265) against the acting mayor Arsenio N. Padre. The lower court rendered judgment, declaring the removal of petitioners illegal and ordered their reinstatement and the payment of their back salaries.

By virtue of the decision, the municipal council of Guimba approved resolutions Nos. 135, Exh. A, dated December 3, 1955; 156, dated June 30, 1956, Exh. B; and 162, dated July 7, 1956, Exh. C; whereby it assumed the responsibility and resolved to appropriate the amount of P5,173.16 for the payment of the back salaries of appellees, and authorizing the amount to be carried as an outstanding obligation of the municipality, in the annual budget for the fiscal year 1956-1957. Pursuant to said resolutions, the then incumbent Mayor, Dr. V. Calica, approved vouchers of the petitioners (Exhibits D and E), covering their salaries as policemen for the municipality of Guimba, from July 27, 1952 to October 22, 1955, at P65.00 per month, in the total amount of P2,528.71, each. When the vouchers were presented to the municipal treasurer, Feli-cisimo Gatmaytan, now respondent, he refused to pay, claiming that there were no funds for said vouchers. The trial Court cited the treasurer to appear before it, in order that he might be examined regarding the finances of the municipality, and it was found that the amount of P10,000.00 was available for said purpose. The petitioners in said case then presented a motion for the execution of the judgment, which was denied on the ground that public funds are exempt from attachment.

On October 13, 1956, long after the municipal council of Guimba had approved the three (3) resolutions, the same council (now with different composition), passed resolution No. 206, disallowing the inclusion of the amount in the budget of the municipality. The refusal of the municipal treasurer to pay the vouchers, caused the filing of the present petition for Mandamus, directed against said municipal treasurer to compel him to pay their back salaries.

During the trial, the parties presented only documentary evidence. The lower court rendered judgment, the pertinent portions of which recite:

"The petitioners have no other remedy in the ordinary course of law. A writ of execution issued in Civil Case No. 1265 had been returned unsatisfied. And since the defendant municipal treasurer has repeatedly and obstinently refused to pay the salaries of the petitioners, there is no other remedy except the writ of mandamus. To deny the petition would render the decision in Civil* Case No. 1265 illusory and nugatory.

Wherefore, let a writ of mandamus issue ordering the Municipal Treasurer of Guimba to pay the back salaries of the petitioners herein in the the amount stated and approved in their vouchers Exhibits D and E. * * *."

This is an appeal from the above judgment, respondent-appellant alleging that it was error for the lower court (1) to hold that a judgment against the mayor is deemed a judgment against the municipality; and (2) to order him (appellant) to pay the back salaries of the appellees, although the same are not provided in a budget approved by the municipal council.

Anent the first proposition, in several cases which involved the action for mandamus filed by detectives unlawfully ousted from their positions, this Court, without touching on the question of the City's liability for the Mayor's act in illegally dismissing the detectives, directed the payment of their back salaries, although the city had not been made a party therein (*Mission vs. Del Rosario*, 94 Phil., 483; 50 Off. Gaz., 1571; *Abella vs. Rodriguez*, 95 Phil., 289; 50 Off. Gaz., 3090; *Uy vs. Rodriguez*, 95 Phil., 493; 50 Off. Gaz., 3574; *Briones vs. Osmeña*, 104 Phil., 588; 55 Off. Gaz., (11) 1920; *Covacha vs. Amante*, G.R. No. L-8358, May 25, 1956, and *Meneses vs. Lacson*, 97 Phil., 857.) In the case of *Mangubat vs. Osmena*, G.R. No. L-12837, April 30, 1959, where the defense was that the City was not made a party to the proceedings, this Court made the following observations:

"There is no reason to believe that these officers and the City Mayor would have exerted greater effort, than those already displayed by them, in protecting the interests of the City of Cebu, were it formally a respondent herein. Indeed, it is only logical to expect, that, having been individually named as respondents, said officers, must have taken as much concern if not more, in warding off petitioner's claim. Under the foregoing circumstances, we would be subordinating the substance to the form if the action for mandamus-insofar as the claim for back salaries is concerned- were, either dismissed, or remanded to the lower court, for the corresponding amendment of the pleading and a repetition of the proceedings held for the last five (5) years, in order to reach the same decision rendered by the lower court and the same conclusions set forth in this decision, as regards the substantive rights of the parties. It is our considered opinion, therefore, that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleadings had been made."

There can be no plausible reason why the above ruling on a procedural matter, should not be applied in the case under consideration. It will be noted that the case on appeal was an off-shoot of a mandamus proceeding instituted against the incumbent Mayor, in his capacity as such. And the municipality of Guimba is presumed to have taken steps to contest the claim of the petitioner-appellees. We may safely say, therefore, that the requirement of joinder of parties has been substantially complied with.

Next in the order of discussion is the more fundamental issue of whether the respondent-appellant municipal treasurer was justified in refusing payment of the vouchers. After the rendition of the decision ordering the reinstatement of the petitioners and the payment of their back salaries, the municipal council of Guimba passed resolutions assuming the responsibility for and authorizing the inclusion of the back salaries in the budget. There is, however, no ordinance appropriating the amount, until the present. At most, the resolutions were only proposals to have the amount included in the "forthcoming budgets". A resolution is ordinarily a declaration of a council, or a legislative body, evincing some purpose or intent to do some act not the doing of the act itself. It is the intention to enter upon some enterprise of public moment, something authorized by law that it may do (*W.B. Gibson Co. vs. Warren Metropolitan Housing Authority*, 29 N. E., 2d. 236). In the case at bar, the resolution assuming the obligation is considered as merely an intention on the part of the council to have the amount equivalent to the back salaries of appellees, included in the budget. A resolution may have the expression of intent, but in order to become effectual, it must be expressed by legislative enactment, that is, by ordinance (*City of Owensboro vs. Bd. of Trustees, etc.*, 301 Ky. 113, 190 SW 2d, 1005, 1108). In this jurisdiction, all municipal legislation creating liability should be embodied in an appropriation ordinance (Sec. 2296, Revised Adm. Code). In the case under consideration, not only was there no appropriation ordinance wherein the amounts

involved have been included in the budget of the municipality, but the municipal council itself had subsequently disallowed the inclusion of the same in the budget. The Revised Administrative Code further provides that the disbursements of municipal funds shall be made by the municipal treasurer, upon properly executed vouchers, pursuant to the budget (Sec. 2300). The Constitution also provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by the municipal treasurer, upon properly executed Philippines). The writ of mandamus will not issue unless the act desired is of absolute obligation on the part of the person sought to be coerced; the relator must show a clear legal right to have the thing done; the action sought must not only be in the respondent's power to do, but it must be his duty to do it; the act must be clearly prescribed and enjoined by law; the duty must be plain and positive (*Callaghan vs. Me Gown*, 90 S.W. 319, *Meril on Mandamus*, 43; cited in *Provincial Remedies & Special Civil Actions*, Hernandez, Jr. and Feria; p. 152). Only specific legal rights may be enforced by mandamus, if they are clear and certain. (*Viuda e Hijos de Crispula Zamora vs. Wright*, 53 Phil., 613). It is not a legal duty of the respondent-appellant to honor the vouchers in question, without a budget or appropriation ordinance, setting aside the funds to cover the salaries of the appellees, and enacted or promulgated in accordance with law. Mandamus, therefore, does not lie.

It would seem that in matters of this nature, the case of *Baldivia vs. Lota*, (107 Phil., 1099) has already blazed the trail that should be followed.

In view of all the foregoing, the decision appealed from is hereby reversed, and another entered, dismissing the case, reserving, however, to the petitioners-appellees the right to take the appropriate action. No pronouncement as to costs. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Gutierrez David, JJ., concur.

Barrera, J. concurs in the result.

Judgment reversed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.