

JUANITO N. FERRER, PETITIONER AND APPELLEE, VS. ALFONSO TABORA, IN HIS CAPACITY AS CITY MAYOR OF BAGUIO CITY, ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. 13010. December 28, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner Juanito Ferrer was holding the position of Assistant Civil Engineer of Baguio City, in charge of the Waterworks system, at a compensation of P3,720.00 per annum, having been appointed thereto sometime in 1954. In a letter of the General Manager of the National Waterworks and Sewerage Authority, dated June 22, 1956, petitioner was authorized, in addition to his duties as Assistant Civil Engineer, to act as representative of the NAWASA, "to receive all records, properties, machinery, equipment, assets, choses in action liabilities, obligations and sewerage, bonds, sinking funds and all unexpended funds of such waterworks, sewerage and drainage systems, including artesian wells in the City of Baguio", under Executive Order No. 127, dated September 1955, of the President of the Philippines.

While Ferrer was on an observation tour in the United States, the City Council of Baguio City, by resolution of June 28, 1956 (Resolution No. 186, s. 1956), abolished his position, apparently because of the council's impression that said office was to be absorbed by and transferred to the National Waterworks and Sewerage Authority as of July 1, 1956. Accordingly, Resolution No. 188, passed by the same council on July 5, 1956, expressly excluded the position from the annual budget of the city.

On October 1, 1956, petitioner filed with the Court of First Instance of Baguio a petition for "Mandamus with Damages", docketed as Civil Case No. 643, wherein he sought, among other things, the restoration of his position or office by the respondents.

After the parties had submitted their respective evidence, the court rendered judgment on August 26, 1957, as follows:

"Judgment is, therefore, rendered declaring Resolution No. 188, Series of 1956, illegal, and ordering Respondents to restore Petitioner to his position as Assistant Civil Engineer in the Bureau of Public Works, Office of the City Engineer, Baguio, as of July 1, 1956, and ordering Respondents further, jointly and severally, to pay petitioner the sum of P600.00 by way of attorney's fees for their unjustified abolition of his position, and to pay the costs."

Hence, this appeal by the respondents.

The appeal must be dismissed, as the record shows that it was perfected beyond the fifteen-day period fixed for mandamus proceedings by section 17 of Rule 41.

Notice of the decision was received by appellants on August 27, 1957. On September 11, 1957, that is to say, fifteen days after receipt of notice of the judgment the appellants filed a motion to reconsider in the following

terms (Record, page 90) :

"COME NOW the respondents in the above-entitled case, by the undersigned counsel, and to this Honorable Court respectfully allege:

- That on August 26, 1957, this Honorable Court rendered a decision in the above-entitled case in favor of the petitioner and against the respondents;
- That said decision is not in accordance with the evidence presented and the facts adduced during the hearing of this case; and
- That said decision is contrary to law.

Wherefore, it is respectfully prayed that the aforementioned decision be considered accordingly."

This motion for reconsideration did not suspend the running of the period of appeal since it did not, contrary to the provisions of section 2, Rule 37 of the Rules of Court, "point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provision of law alleged to be contrary to such findings or conclusions" (Alvero vs. De la Rosa, 76 Phil., 428, and case cited therein). Appellants cannot be excused from said requirement of the Rules, because the legality or illegality of petitioner's ouster from office was not the only question of law raised in the lower court. The issue of whether or not the petitioner refused to render services to the City of Baguio and may be deemed to have abandoned his office was likewise broached by the parties and taken up by the court below, and is in fact, also assigned as error in this appeal. That the motion to reconsider was set for hearing does not determine whether or not it is a pro forma motion, since the rule clearly demands that the controverted findings be specified in the motion itself.

It follows that as the notice of appeal was actually filed only on September 23, 1957, twenty-seven (27) days after notice of judgment, the trial court's decision had been by then final and could no longer be appealed. Hence, this Court acquired no jurisdiction to review the decision.

Wherefore the appeal is dismissed, with costs against appellants.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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