

HON. GOVERNOR DEMOCRITO O. PLAZA (deceased, to be substituted by incumbent GOVERNOR VALENTINA G. PLAZA), DANILO S. SAMSON, FE TAN-CEBRIAN, HONORABLE SB MEMBER (now Vice Governor...

G.R. No. 138464. January 18, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, seeking to annul and set aside the Decision[1] dated February 13, 1997 of the Court of Appeals (CA) in CA- G.R. SP No. 34359, as well as its Resolution[2] dated March 30, 1999, denying petitioners' motion for reconsideration. The questioned decision lifted the orders of preventive suspension issued by petitioner Governor Democrito O. Plaza against private respondents. The appellate court then ordered the reinstatement of private respondents to their former positions with right to backwages but without prejudice to the continuation of the administrative proceedings against them.

The relevant facts of the case are as follows:

A few months after his assumption as Governor of Agusan del Sur in 1992, petitioner Democrito O. Plaza received separate administrative complaints against the following:

(a) Gil Pol Tan, Provincial Budget Officer, on the ensuing grounds:

- For having drawn cash advance out of the Local Government Funds (General Funds) of the Provincial Government of Agusan del Sur amounting to ONE HUNDRED SEVENTEEN NINE HUNDRED THIRTY FIVE THOUSAND (P117,935.00) PESOS ONLY for allege [sic] OPERATIONAL EXPENSES of the Provincial Government of Agusan del Sur barely three (3) days before the May 11, 1992 synchronized elections, without passing the same to pre-audit as one of the requirements under Commission on Audit Circular No. 86-257 which states among others "ALL CASH ADVANCES, except those granted for the payment of salaries and wages of officers or employees, shall be pre-audited."
- For making again a cash advance in an increasing amount to liquidate his previous cash advance, which is a clear violation again of COA Circular No. 86-257 which states among others "A cash advance for miscellaneous expenses shall be reported on and liquidated as soon as, but not later than thirty (30) days after, the purpose of which it was served" and "No cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made for the full amount of the cash advance" and "No cash advance shall be granted for the purpose of liquidating a previous cash advance."
- For making cash advances beyond his approved cash bond, again, a violation to COA Memorandum Circular No. 86-257 which states that "No Officer and employee shall be granted a cash advance unless he is properly bonded in accordance with law or regulations. The amount of cash advance which may be granted shall not exceed the maximum amount covered by his bond." [3]

(b) Emmanuel S. Quismundo, Provincial Planning and Development Coordinator, for inappropriate disbursements of the 20% Development Funds thereby constituting technical malversation and other violations based on existing guidelines;[4] and

(c) Elisa O. Gilsano, Provincial Accountant, for neglect in the performance of duty.[5]

Pursuant to Book I, Title Three, Section 86 of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code (LGC) of 1991, Plaza issued Executive Order No. 01, Series of 1992,[6] creating a Provincial Investigating Committee (PIC) composed of the following petitioners:

Chairperson

-

Atty. Danilo Samson
Provincial Legal Officer

Secretary

-

Ms. Fe Tan-Cebrian
Acting Provincial Personnel Officer

Member

-

Hon. Virginia M. Getes
SP Member

-

Mr. Adolfo A. Llagas
Asst. Provincial Treasurer
Officer-in-Charge

The PIC was established to conduct hearings on cases brought against appointive local officials and employees, and was ordered to submit its findings and recommendations to the local chief executive within 15 days from conclusion of the hearings.[7]

On various dates in October 1992, petitioner Samson, acting as Chairperson of the Administrative Investigating Committee, notified private respondents of the administrative complaints. Tan allegedly committed a conduct prejudicial to the best interest of the service,[8] Gilsano was charged with neglect in the performance of duty,[9] and Quismundo was allegedly liable for technical malversation, an act prejudicial to the best interest of the service.[10] Private respondents were required to answer in writing under oath within 72 hours from receipt together with the affidavits of their witnesses, if any, and to state whether they would opt for a formal

investigation or would waive such right.

Instead of filing their answers, private respondents filed separate Motions to Inhibit/Dismiss[11] seeking to inhibit Samson on the ground that he had no authority under the law to conduct the administrative investigations because his appointment as Provincial Legal Officer had not been acted upon by the Sangguniang Panlalawigan of Agusan del Sur, which concurrence is of utmost necessity to confer upon his appointment by the Provincial Governor the imprimatur of legality and validity. Another issue raised by private respondents was that they could not expect to be given due process and the cold neutrality of an impartial committee.

On October 26, 1992, Samson issued an Omnibus Order[12] denying private respondents' motions to dismiss/inhibit. The fallo of the order reads:

WHEREFORE, the Motions to Dismiss/Inhibit filed by the respondents is hereby DENIED.

Respondents however, is [sic] given an extension of time of five (5) days after receipt of this order to file their Answer under oath not Motion for Reconsideration. Failure to file Answer within the given period of time, respondents are hereby deemed to have waived their right to present evidence in their behalf and the investigating committee shall proceed to conduct its investigation process afterwhich [sic] will submit its findings and recommendations to the office of the Provincial Governor.

SO ORDERED.[13]

Private respondents then opted to file, on November 6, 1992, an Omnibus Motion to Dismiss the administrative charges.

On November 9, 1992, Plaza issued Memorandum Order Nos. 131-92 to 133-92[14] ordering the preventive suspension of private respondents for a period of 60 days effective upon receipt of the orders.

On December 3, 1992, private respondents filed before the Regional Trial Court (RTC) of Prosperidad, Agusan del Sur, Branch VI, a Petition for Certiorari, Prohibition, Injunction, with Preliminary Injunction and/or Restraining Order, docketed as Civil Case No. 897, seeking to annul the preventive suspension imposed by Plaza, as well as the October 26, 1992 Omnibus Order denying their motions to inhibit/dismiss.

In an Order[15] dated December 8, 1992, the trial court issued a temporary restraining order and ordered Plaza to refrain from further continuing with the investigation and/or conducting further proceedings on the subject administrative charge and from enforcing the assailed orders and/or the effects thereof until further orders from the court.

On January 5, 1993, Plaza issued Memorandum No. 001-93,[16] the contents of which are as follows:

Reports are received by this office that you have the intention to assume your respective offices after the lapse of sixty (60) days from the date you are placed under preventive suspension.

Please be reminded that the period of suspension stops running from the time you filed the petition for Certiorari with the Court of Appeals and Regional Trial Court Branch VI of this province pursuant to Section 85 par. (b) of R.A. 7160 otherwise known as the Local Government Code of 1991.

Please be guided accordingly.

DEMOCRITO O. PLAZA (Sgd.)
Provincial Governor[17]

On January 18, 1993, the RTC issued a writ of preliminary injunction[18] "to temporarily stop the administrative fact finding until after the principal action shall have been resolved."

A motion for reconsideration[19] of the RTC order dated January 18, 1993 was filed by private respondents arguing that the act of imposing a preventive suspension had become a fait accompli since the 60-day period from November 9, 1992, private respondents' receipt of the orders of preventive suspension, had already elapsed. They prayed for the nullification of the orders of preventive suspension and the lifting of the legal effects of the Memorandum dated January 5, 1993. This was denied by the trial court in an Order[20] dated March 15, 1993.

Meantime, Resolution No. 11, Series of 1993[21] was issued by the Sangguniang Panlalawigan of Agusan del Sur on February 11, 1993 reiterating the rejection of the appointment of Samson as Provincial Legal Officer of the province for lack of the required 5-year law practice.

On June 18, 1993, the trial court dismissed the petition, the dispositive portion of which reads:

ACCORDINGLY, this Petition is, as it is hereby ordered DISMISSED for having been filed prematurely and precipitately.

SO ORDERED.[22]

The RTC reasoned that private respondents failed to exhaust the available administrative remedies since the proper forum to decide the dispute is the Civil Service Commission (CSC) pursuant to Section 87 of R.A. No. 7160.

The trial court later denied private respondents' motion for reconsideration in an Order[23] dated November 19, 1993.

Feeling aggrieved, private respondents immediately filed a notice of appeal to the CA. The appeal was docketed as CA-G.R. SP No. 34359 by the appellate court. In their Memorandum filed before the CA, private respondents raised the lone assignment of error that the controversy falls within the well-settled exceptions to the principle of non-exhaustion of administrative remedies.

On February 13, 1997, the appellate court in CA-G.R. SP No. 34359 rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the appealed decision is SET ASIDE and in lieu thereof, judgment is rendered lifting the orders of preventive suspension issued by then Gov. Democrito Plaza against appellants. Appellants are reinstated to their previous positions with right to backwages but without prejudice to the continuation of the administrative proceedings against them.

SO ORDERED.[24]

The CA opined that Samson's authority as chairman of the PIC is not invalidated by the lack of concurrence of the Sangguniang Panlalawigan in his appointment as the Provincial Legal Officer. Moreover, the preventive suspension of private respondents may be ordered even without a hearing as such suspension is not a penalty but only a preliminary step in an administrative investigation. It likewise ruled that the filing of the petition for certiorari and prohibition before the RTC was not a delay which would interrupt the running of the period of preventive suspension. Lastly, the CA pronounced that to sanction preventive suspension pending resolution of an administrative case is equivalent to indefinite suspension which the Constitution prohibits.

On March 30, 1999, the CA denied[25] for lack of merit the motion for reconsideration filed by private respondents.

Meanwhile, a series of events occurred during the pendency of the appeal and even after the promulgation of the appellate court's decision. On August 5, 1993, the members of the Sangguniang Panlalawigan of Agusan del Sur

discovered the existence of CSC Resolution No. 93-1765 dated May 17, 1993, designating petitioner Fe Tan-Cebrian as substitute Provincial Government Department Head of the Office of the Provincial Planning and Development Coordinator. The members of the sanggunian then filed a petition[26] before the CSC seeking to set aside the aforesaid resolution and to order the immediate reinstatement of Quismundo and the payment of his backwages. Similar petitions were also filed by the members of the sanggunian praying for the immediate reinstatement of private respondents Tan and Gilsano with payment of back salaries.

On January 28, 1997, the CSC issued Resolution No. 970686[27] directing the incumbent Governor of Agusan del Sur to immediately reinstate private respondents to their former positions without prejudice to the continuance of the administrative cases against them. A motion for reconsideration was filed by the Governor of Agusan del Sur but the same was denied in CSC Resolution No. 974065[28] dated October 14, 1997.

Undaunted, the provincial governor filed before the CA a petition for review with temporary restraining order and injunction docketed as CA-G.R. SP No. 46650 praying that an order be issued enjoining the CSC from implementing Resolutions Nos. 970686 and 974065.

By virtue of CSC Resolution No. 974065, private respondents wrote[29] the incumbent governor informing the latter that they are assuming office on December 1, 1997. However, then Provincial Governor Alex G. Bascug issued Office Order No. 016-97, Series of 1997[30] dated December 1, 1997 detailing private respondents to the Agusan del Sur Economic and Business Assistance Center (ASERBAC). On December 29, 1997, counsel for private respondents informed Governor Bascug through a letter[31] that he has advised his clients to cease and desist from reporting to work as the detail to ASERBAC was in reckless and wanton contravention of the order of the CA dated February 13, 1997.

Petitioners now seek relief from this Court via a petition for review on certiorari.

The following are the issues raised by petitioners:

10.

Whether or not the Court of Appeals erred in ruling that the appellants [sic] filing of Special Civil Action for Prohibition and with Preliminary Injunction and/or Restraining Order before the RTC is a delay which does not interrupt the running of the period of suspension;

10.a

Whether or not the Court of Appeals erred in ruling that the preventive suspension imposed against Petitioner-Appellants [herein private respondents] should be lifted;

10.b

Whether or not the Court of Appeals erred in ruling that Petitioner-Appellants should immediately be reinstated;

10.c

Whether or not the Court of Appeals erred in ruling that Petitioner-Appellants are entitled to backwages during the entire period of their suspension;

10.d

Whether or not the Court of Appeals erred in ruling that the preventive suspension was unjustified.[32]

Petitioners argue that private respondents have not yet been exonerated and to grant them the right to back salaries is, at the moment, premature. It is likewise their contention that the undue delay in the investigation of private respondents was caused by them and shall be deducted from the period of their suspension as provided in Section 85(b)[33] of R.A. No. 7160. In addition, petitioners explain that Section 88 of R.A. No. 7160 provides that a suspended respondent is entitled to all the rights and privileges appurtenant to his position only when he is exonerated.

In their Amended Petition for Review[34] filed on September 16, 1999, and subsequently in the Reply[35] filed on May 2, 2000, petitioners argue that the only pertinent issue to be resolved is whether or not the CA's award of backwages is in accordance with law and the applicable jurisprudence because of the following developments:

- On July 26, 1999, petitioner Governor Valentina G. Plaza through Provincial Administrator Dante Luz Viacrucis sent respondents a letter, certified copy attached as Annex "M", stating that "pursuant to the Resolution of the Civil Service Commission, you are again hereby enjoined to report for work not later than August 2, 1999."
- On August 2, 1999, respondents complied by reporting for work, formally notifying the Governor that "in compliance to your Memorandum dated July 26, 1999, we are respectfully informing you that we, the undersigned, are assuming the duties and responsibilities of our respective offices today, August 2, 1999." A copy of said letter is hereto attached as Annex "N".[36]

Similarly, the appellate court issued, on November 26, 1999, a Decision in CA-G.R. SP No. 46650, the fallo of which reads:

WHEREFORE, foregoing premises considered, finding herein petition to be meritorious, the Resolution No. 97-0686 of the Civil Service Commission, dated January 28, 1997 is hereby SET ASIDE and a new one is entered as follows:

- Ordering that the counting of the sixty (60) day preventive suspension of the private respondents Elisa O. Gilsano, Gil Pol Tan and Emmanuel Quizmundo [sic] shall start from the day the decision of the Court of Appeals on [sic] CA-G.R. SP No. 34359 dated June 6, 1991 [sic] have become final and executory.
- Ordering further, thereafter, that suspension of the said employees shall be lifted and the incumbent Provincial Governor is directed to reinstate the above mentioned private respondents to their former positions as Provincial Accountant, Provincial Budget Officer, and Provincial Planning and Development Coordinator, respectively, without prejudice to the continuance of the administrative cases against them.

No pronouncement as to cost.

SO ORDERED.[37]

As correctly raised by the petitioners, the only remaining issues to be determined by the Court are whether the

private respondents are entitled to backwages during the entire period of their suspension and, concomitantly, whether the CA erred in ruling that the preventive suspension was unjustified. The other issues, as conceded by the parties, have become moot and academic in view of the actual reinstatement of private respondents last August 2, 1999.

The Court rules that private respondents' claim for back salaries is untenable because their suspension was authorized by law and they have not been absolved of the administrative charges filed against them.[38] In *Gloria v. Court of Appeals*,[39] this Court had the occasion to clarify that the payment of salaries corresponding to the period when an employee is not allowed to work may be decreed if he is found innocent of the charges which caused his suspension and when the suspension is unjustified.

Stated otherwise, the preventive suspension of the private respondents is authorized by R.A. No. 7160. Section 85 (a) of the LGC of 1991 states:

SEC. 85. Preventive Suspension of Appointive Local Officials and Employees. — (a) The local chief executives may preventively suspend for a period not exceeding sixty (60) days any subordinate official or employee under his authority pending investigation if the charge against such official or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, or if there is reason to believe that the respondent is guilty of the charges which would warrant his removal from the service.

Clearly, the law provides for the preventive suspension of appointive local officials and employees pending investigation of the charges against them. The suspension given to private respondents cannot, therefore, be considered unjustified for it is one of those sacrifices which holding a public office requires for the public good.[40] To be entitled to back salaries, private respondents must not only be found innocent of the charges, but their suspension must likewise be unjustified.

WHEREFORE, the Decision of the Court of Appeals dated February 13, 1997 in CA-G.R. SP No. 34359, and its Resolution therein dated March 30, 1999 are hereby MODIFIED. The Provincial Investigating Committee is DIRECTED to reconvene and proceed with the administrative cases filed against private respondents Gil Pol Tan, Elisa O. Gilsano, and Emmanuel S. Quismundo, and to resolve the cases with all reasonable dispatch. The award of backwages is DELETED.

No costs.

SO ORDERED.

Puno, C.J., Chairperson, Sandoval-Gutierrez, Corona, and Leonardo-De Castro, JJ., concur.

[1] Penned by Justice Corona Ibay-Somera and concurred in by Justices Romeo J. Callejo, Sr. (now a retired member of the Supreme Court) and Salvador J. Valdez, Jr.; rollo, pp. 33-59.

[2] Rollo, p. 67.

[3] Rollo, pp. 68-69.

[4] *Id.* at 70.

[5] *Id.* at 71.

[6] Records, pp. 117-118.

[7] Records, p. 117.

[8] Id. at 126.

[9] Id. at 129.

[10] Id. at 131.

[11] Id. at 132-158.

[12] Records, pp. 23-27.

[13] Id. at 26-27.

[14] Id. at 20-22.

[15] Id. at 49.

[16] Rollo, p. 490.

[17] Id.

[18] Records, pp. 171-173.

[19] Id. at 194-204.

[20] Records, p. 214.

[21] Id. at 312-313.

[22] Id. at 235.

[23] Id. at 414-415.

[24] Rollo, pp. 58-59.

[25] Id. at 67.

[26] Rollo, pp. 491-499.

[27] Id. at 107-110.

[28] Id. at 522-523.

[29] Id. at 111.

[30] Id. at 112-113.

[31] Id. at 114.

[32] Rollo, pp. 338-339.

[33] SEC. 85. Preventive Suspension of Appointive Local Officials and Employees.— (a) x x x

(b) Upon expiration of the preventive suspension, the suspended official or employee shall be automatically reinstated in office without prejudice to the continuation of the administrative proceedings against him until his termination. If the delay in the proceedings of the case is due to the fault, neglect or request of the respondent, the time of the delay shall not be counted in computing the period of suspension herein provided.

[34] Rollo, pp. 133-156.

[35] Id. at 303-307.

[36] Id. at 153.

[37] Rollo, p. 314.

[38] Layug v. Quisumbing, G.R. No. 82272, February 7, 1990, 182 SCRA 46, 50-51, citing Reyes v. Hernandez, 71 Phil. 397, 398 (1941), and Villamor v. Lacson, G.R. No. L-15945, November 28, 1964, 12 SCRA 418, 423-424.

[39] 365 Phil. 744 (1999).

[40] Id. at 762.

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