

JOSEFINO VELASCO, PETITIONER, VS. THE COURT OF APPEALS AND GUILLERMO N. TEVES, RESPONDENTS.

G.R. No. 14691. May 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Guillermo N. Teves, a civil service eligible, was appointed Chief of the Secret Service Division of the Davao City Police Department, effective July 1, 1951, with compensation at P2,340.00 per annum; assumed and discharged the duties of the said office continuously until January 15, 1953, when the City Mayor terminated his services, for lack of confidence. Contesting his alleged illegal separation from the service, Teves filed protests with the Integrity Board and the Civil Service Commission. And, failing to receive any answer to his said protests, he instituted on May 29, 1953, mandamus proceedings against the City Mayor, Rodolfo Sarenas, in the Court of First Instance of Davao, claiming that his removal was in violation of Republic Act No. 557 and praying for his reinstatement to the position, he was previously holding, for payment of salaries, moral damages, and attorney's fees.

The respondent City Mayor moved for the dismissal of the petition, alleging that in virtue of Resolution No. 584, reorganizing the Davao City Police Department, passed by the City Council of Davao on October 6, 1952, the position of Chief, Secret Service Division then occupied by petitioner Teves was abolished in the 1952-1953 plantilla and budget of the City. As the aforesaid motion was denied, respondent filed his answer setting up the same defense, i.e., the alleged abolition of the position to which petitioner sought reinstatement, or that if it still was existing under a new designation (without specifying the same), it was occupied by a third person not a party to the suit, and quo warranto proceedings therefore, against the occupant thereof should have been proper.

After due hearing, the court rendered judgment on January 12, 1954, ordering petitioner's reinstatement but disallowing his back pay. From this decision, respondent City Mayor appealed to the Court of Appeals (CA-G.R. No. 12721-R). On February 18, 1955, the Court of Appeals promulgated a decision, in part, reading as follows:

"The position of the petitioner was that of Chief of the Secret Service Division carrying & salary of P2,220.00 per annum as he himself stated in his application for leave of absence. None of the positions in the plantilla has any semblance with that from which petitioner was removed, both in designation and in salary. Thus, we are inclined to believe that the City Council had not provided salary for the position of the Chief of the Secret Service Division which is, therefore, deemed abolished. That being the case, the respondent cannot order the reinstatement of the petitioner for the obvious reason that there is no position to which he could be reinstated. And it follows that the City Council should be first compelled to restore the position in the plantilla and provide salary therefor if the sought writ of mandamus is intended to afford a tangible and final relief.

"A witness for the petitioner testified that the petitioner's position is now occupied by a certain captain, Josefino Velasco, under a different denomination. And if Josefino Velasco is occupying the position to which petitioner seeks to be reinstated, it is only fair that the occupant be heard first before he be ousted. He should have been made a party. It may be argued, in this connection that the petitioner was not given any opportunity

to be heard when he was removed from his office but it should not be countenanced that an anomaly be repeated.

"To clinch his contention the petitioner cites an American authority which reads as follows:

'* * * But there is authority to the effect that mandamus is the proper remedy where a person has been unlawfully removed from office regardless of the place having been filled before commencement of the proceedings.' (p. 21, Appellee's Brief).

"This is impractical in the case at bar. There is no position to which the petitioner can be reinstated. It is to be regretted that no effort was made on the part of the petitioner to clearly show that the position from which he was removed still exists and is the one allegedly held by Josefino Velasco at present.

"The petition is, therefore, without basis and should be dismissed, as it is hereby dismissed, without further costs."

Teves filed a motion for reconsideration and new trial on the ground of newly-discovered evidence, alleging that—

"Somebody tipped the petitioner that he has been outsmarted by the respondent in the present case when the latter presented in evidence during the trial of this case in the lower court a mere extract of the plantilla for the Police Department of the City of Davao for the year 1952-1953 from which respondent-appellant has deliberately omitted or suppressed the last column entitled 'Remarks', wherein it is stated that the position of detective captain which is the third item in Exhibit 4 was merely a 'change of designation from Chief of the Secret Service Division.' Since petitioner-appellee has been denied by respondent-appellant and his subordinates access to the records of the respondent-appellant and the Secretary of the Municipal Board of the City of Davao, he thought of trying the Office of the Secretary of Finance to verify that information, and he finally succeeded in securing a certified true copy of the said plantilla (Exhibit 4) which had been submitted to the Secretary of Finance for his approval and is now marked as Exhibit 'H' for the petitioner-appellee, together with, a certified true copy of the letter of the Undersecretary of Finance dated October 20, 1952, approving the said plantilla which is marked now as Exhibit 'I' for the petitioner-appellee, and both made as integral parts of the present motion.

"On the second page of the attached Exhibit 'H' there clearly appears under the last column 'Remarks,' opposite the third item for the position of detective captain, the following remarks, Change of designation from Chief of the Secret Service Division.' We have underlined it with red pencil. For this, it is conclusive that the position held and occupied by petitioner-appellee was reorganized by changing its former name of 'Chief of the Secret Service Division' to 'Detective Captain', with the corresponding annual salary attached thereto. It is only the designation of the name of the office therefore, that has been changed, but the office or position remains the same, under the said plantilla. "On page 2 of Exhibit 'I', the second to the last paragraph thereof, the Undersecretary of Finance specifically and expressly stated that 'the change of designation of some positions is approved, provided that nobody stands prejudiced thereby.' We have also underlined it with red pencil. From this conditional approval made by the Office of the Secretary of Finance of the above-mentioned plantilla, it is likewise conclusive that although the designation of the office or position of the Chief of the Secret Service Division of the City of Davao has been, changed to that of Detective Captain, the officer occupying that position should continue to occupy the position of detective captain and to, receive the annual compensation attached to the said position, otherwise, it is clearly understood from the said conditional approval of the Secretary of Finance that petitioner-appellee would necessarily be prejudiced by the said reorganization if its consequence would be to remove him from office without due process of law. It is now clear and apparent that respondent-appellant has acted in bad faith in presenting merely an extract of the said plantilla (Exhibit 4) and in deliberately refusing or failing to present in evidence the approval (Exhibit 'I') made by the Secretary of Finance of said plantilla." (pp. 1-3, motion for reconsideration and new trial.)

Over the respondent's opposition, the Court of Appeals granted the motion and remanded the case to the court of

origin for new trial, with instruction to include Josefino Velasco, the alleged occupant of the position, as party respondent in order that the latter may be given opportunity to protect his interest. Conformably therewith, petitioner Teves filed with the trial court an amended petition on September 26, 1955, naming Josefino Velasco as one of the respondents.

"Velasco accordingly filed an answer interposing, among others, the affirmative defenses of prescription of action, negligence and laches, and that Teves' dismissal was legal and valid because he was occupying a position primarily confidential in nature.

On June 29, 1956, the trial court rendered judgment in this wise:

"EN SU VIRTUD, el Juzgado dicta decision en esta causa:

"(a) Declara ilegal la separacion del recurrente Guillermo N. Teves del puesto de jefe de la division del servicio secreto del cuerpo de la ciudad de Davao;

"(b) Declara nulo y ningun valor el nombramiento extendido a favor del recurrido Josefino Velasco al puesto de detective captain del cuerpo de la policia de la ciudad de Davao;

"(c) Ordena al recurrido Velasco vaque el puesto que ocupa, detective captain, del cuerpo de la policia de Davao;

"(d) Ordena al recurrido Alcalde de la Ciudad de Davao, Carmelo L. Porras, reponga al recurrente Teves al puesto de jefe de la division de servicio secreto, hoy designado con el nombre de detective captain del cuerpo de la policia de la ciudad de Davao, con el sueldo de P2,580.00 al año;

"(e) Ordena al Tesorero de la ciudad de Davao, pague el sueldo del recurrente Teves a razon de P2,580.00 anual, a contar desde el 16 de enero de 1953 hasta la fecha de su reposicion al puesto mencionado; y

"(f) Sin especial pronunciamiento en cuando a las costas."

Respondents City Mayor of Davao and Josefino Velasco interposed an appeal to the Court of Appeals. Affirming the decision appealed from, the Court of Appeals said:

"Upon the foregoing factual settings, it is undisputed that petitioner Teves was a civil service eligible duly appointed to the position of Chief of the Secret Service Division of the Police Department, Davao City, and his dismissal was without cause. And respondent Velasco is not a civil service eligible and his appointment is temporary. He may, therefore, be replaced by one entitled to the office. Were he the one ousted from the office, even without cause, and should he seek reinstatement, it is clear that he has no legal ground upon which to claim reinstatement, and he can not even dispute the validity of his successor's appointment. His present occupation or tenure of said post being temporary, it is precarious and does not come within the contemplation of the constitutional prohibition against removing an employee from office except for cause. Upon the other hand, it has heretofore been ruled by the Supreme Court that city detectives are members of the police force and that the manner of their dismissal is governed by the provisions of Republic Act No. 567 which has repealed Executive Order No. 264, series of 1940, insofar as it may be in conflict with the former law. (Quintos vs. Lacson, et al., 97 Phil., 290; 51 Off. Gaz., [7] 3429; Olegario vs. Lacson, 97 Phil., 75). As it has been shown that the position of 'Chief, Secret Service Division of the Police Department, Davao City', to which petitioner was duly appointed was the same position as 'Detective Captain, Police Department, Davao City', as provided for in the City Budget for 1952-1953, and as this fact is not seriously disputed by the respondents, it necessarily follows that petitioner Teves has the legal right to occupy the Office of Detective Captain of the Police Department, Davao City, and to discharge the duties thereof." (Emphasis supplied.)

Passing upon the question, raised by respondents, of the alleged inadequacy of a writ of mandamus to oust Velasco from the post he was occupying, or of the alleged prescription of the cause of action as far as respondent

Velasco was concerned, granting that the case was changed from mandamus to quo warranto, the Court of Appeals, relying on the ruling of this Court in the case of *Batungbakal vs. National Development Co., et al.*,^[1] upheld Teves' right to reinstatement and ordered the payment of back salaries to the latter. However, upon the respondent Mayor's motion for reconsideration, and being apprised that the City of Davao was not made a party therein, the Court of Appeals modified the decision of the court a quo, as well as its own, by eliminating therefrom the provision regarding payment of back salaries to petitioner Teves. Respondent Velasco's separate motion for reconsideration was denied.

Velasco and Teves interpose the instant petitions for certiorari, the first contesting the correctness and legality of the decision of the Court of Appeals reinstating Teves to the position of Detective Captain (G.R. No. L-14691), and the latter, questioning that portion of the decision denying his prayer for back salaries (G.R. No. L-14776). G.R. No. L-14691:

This Court has been consistent in declaring the dismissal of detectives and/or members of the city or municipal police force, for alleged lack of confidence, to be violative of Republic Act No. 557 (*Olegario vs. Lacson*, 97 Phil., 75; *Mission vs. Del Rosario*, 94 Phil., 483; 50 Off. Gaz. (4) 1571; *Abella vs. Rodriguez*, 94 Phil., 494; 50 Off. Gaz. (4) 1566; *Palamme vs. Zagado*, 94 Phil., 494; 50 Off. Gaz., 1566; *Quintos vs. Lacson*, 97 Phil., 290; 51 Off. Gaz. (7) 3489). There is no question, therefore, that were the separation of Teves based solely on the supposed lack of confidence of the City Mayor, such termination of his services is patently in contravention of the law and jurisprudence on the matter. But it is being claimed that, apart from the foregoing reason, the dismissal of Teves was brought about by the abolition of his position. The court a quo, sustained by the Court of Appeals, however, found that there was actually no abolition of the office, although the same was given a new designation, a different name. Consequently, respondent Teves' deprivation of the right to such office is illegal.

Anent the question of prescription, laches and negligence raised by herein petitioner Velasco, we similarly find the same unmeritorious.

Teves was separated from the services effective January 15, 1953 by Mayor Sarenas, for lack of confidence. In due time, he filed protests against his dismissal in the Integrity Board and the Civil Service Commission. And obtaining no definite action thereon, on May 29 of the same year, or hardly 4 months after his illegal separation, he instituted mandamus proceedings in the Court of First Instance of Davao, to compel the City Mayor to reinstate him to Office. Clearly, Teves was not guilty of laches or negligence, nor was his present action barred by prescription. The claim of petitioner Velasco that his inclusion in the action on September 26, 1955 pursuant to the directive of the Court of Appeals was already barred since it was effected beyond 1 year from January 13, 1953 when he was appointed in place of Teves, is obviously based on the wrong assumption that the action had been converted from mandamus to quo warranto. This is not so. Teves never changed his theory, or the nature of his action. And, both the Court of First Instance of Davao and the Court of Appeals treated the case in all its stages, from its inception, as a proceeding in mandamus. The first decision of the trial court rendered on January 12, 1954 already declared the separation of Teves illegal, and decreed:

"En su virtud, el Juzgado dicta sentencia ordenando al recurrido, sus agentes y representantes, reponga al recurrente en el puesto que actualmente ocupa Josefino Velasco, que no esta calificado en el servicio civil. * *

* "

Upon the first appeal to the Court of Appeals interposed by the respondent City Mayor, the lower court's decision was reversed on February 18, 1955, not on the ground that the separation was held legal, but because the appellate court then believed the position held by Teves had been abolished. However, on a motion for reconsideration and new trial by Teves, the first decision was set aside and the case remanded to the trial court "to enable him (Teves) to prove that the position from which he was removed is the same one now occupied by Josefino Velasco. The

latter it is suggested, should be given an opportunity to protect his interest by including him as a party in the case."

It is only in pursuance of this suggestion of the Court of Appeals that Velasco was impleaded as a party on September 25, 1955. But Teves did not amend his petition converting the same into a quo warranto proceeding. The judgment rendered after the new trial again reiterated the declaration of illegality of the separation of Teves and consequently of the appointment of Velasco to replace him and ordered once more the reinstatement of Teves and the payment of his salary.

Appealed for the second time to the Court of Appeals, this appellate court still considering the case as a proceeding in mandamus, and after specifically declaring Teves dismissed as without cause, and finding Velasco's appointment merely temporary "to continue until you (Velasco) are replaced by an eligible or sooner removed by order of competent authority", affirmed the lower court's decision ordering the reinstatement of Teves.

All throughout, therefore, the case remained as it was originally instituted on May 29, 1953, a proceeding in mandamus filed within the year from Teves' illegal separation.

G.R. No. L-14776:

Guillermo N. Teves, as petitioner in this case, questions only that portion of the decision of the Court of Appeals denying his claim for back salaries. It is admitted that the petition for mandamus, as amended, was only directed against the City Mayor and the incumbent, Josefino Velasco. The Court of Appeals ruled that petitioner's failure to include the City of Davao as party respondent was fatal to his claim for back salaries. We agree with this view of the respondent Court.

It is an elementary rule of procedure that cases must be prosecuted for and against the real parties in interest, and in an action for recovery of accrued salaries, the appropriation for which had already been expended, the City that would have to provide the needed amount is certainly a necessary party therein.[2] Petitioner Teves, however, cites cases decided by this Court wherein back salaries were awarded despite the fact that the city or municipality concerned were not made parties to the actions.[3] The aforementioned citations are not controlling in the case at bar, for in those instances, the question of jurisdiction of the court to make the awards was not raised and passed upon. Nor can we apply our ruling in the cases of *Mangubat vs. Osmeña*, (G.R. No. L-12837, prom. April 30, 1959) and *Baguio vs. Rodriguez* (G. R. No. L- 11078, prom. May 29, 1959) that petition for mandamus and quo warranto may be entertained and back salaries awarded notwithstanding the non-inclusion of the city as a party, for the reason that in those cases, the action was directed against the mayor, the treasurer, the auditor, and the city council—all represented by the city attorney. The inclusion in the petition of these officials, specifically the city council that would pass the necessary legislation covering the necessary appropriation, the city treasurer and the city auditor who would release the funds, was considered substantial compliance with the law. Differently, in the instant case, the action was directed only against the City Mayor. There is no question that the said respondent Mayor may, by a writ of mandamus, be compelled to reinstate petitioner Teves, but, certainly, back salaries can not be awarded without affording either the City itself or the City Council opportunity to be heard and prepare its defense.

Wherefore, the decision of the Court of Appeals of July 23, 1958, as amended by its resolution of October 14, 1958, is hereby affirmed, with costs against petitioners Josefino Velasco (in G.R. No. L-14691) and Guillermo N. Teves (in G.R. No. L-14776). So ordered.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., on leave, took no part.

Padilla and Endencia, JJ., took no part.

[1] 93 Phil., 182; 49 Off. Gaz. (6) 2290, wherein it was held that—

"Inasmuch as Batungbakal was illegally suspended and dismissed, legally speaking, his position never became vacant, hence there was no vacancy to which the present incumbent could be permanently appointed. In other words, the present incumbent's temporary occupancy of, or tenure in said post is temporary and precarious and does not come within the contemplation of the constitutional prohibition. But, assuming for the moment that the incumbent's tenure was permanent and that said tenure fell under the protection of the Constitution, still, his being made to leave the post to give way to the plaintiff's superior right, may yet be considered as removal for cause, not unlike a case of quo warranto where a respondent incumbent is ousted by court order to give way to the successful party or petitioner."

[2] Angara vs. Gorospe, 101 Phil., 79; 53 Off. Gaz. (14) 4480; City of Bacolod vs. Enriquez, 101 Phil., 644; 55 Off. Gaz. (51) 10545; Cabanes vs. Rodriguez, L-9799, May 31, 1957; Cabo Kho vs. Rodriguez, L-9032, September 28, 1957.

[3] Uy vs. Rodriguez, 95 Phil., 493; 50 Off. Gaz. (8) 8574; Abella vs. Rodriguez, 95 Phil., 289; 50 Off. Gaz., [7] 3039; Mission vs. Del Rosario, 94 Phil., 483; 50 Off. Gaz., 1571; Covacha vs. Amante, L-8358, May 25, 1956.

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