

LAZARO BOOC, PETITIONER AND APPELLANT, VS. SERGIO OSMEÑA, JR., ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 14810. May 31, 1961*

Ponente: PADILLA, J.

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This is an appeal from a judgment of the Court of First Instance of Cebú dismissing Lazaro Booc's petition to compel the respondents Mayor and Assistant City Engineer to reinstate him to his position as General Bridge Foreman with compensation at the rate of P7.50 per day; the respondent City Auditor to pass in audit the voucher or payroll to pay his wages due from the date of his dismissal on 27 August 1956 to the date of his reinstatement and the respondent City Treasurer to pay whatever compensation may be due the petitioner as General Bridge Foreman from the date of his dismissal to the date of reinstatement; to recover from the respondents the sum of P500 as attorney's fees and from the respondents Mayor and Assistant City Engineer P50,000 as moral damages and P20,000 as exemplary or corrective damages and the costs of the suit; and for other just and equitable relief (civil No. R-4729).

On 11 September 1956 the appellant filed this petition for mandamus in the Court of First Instance of Cebú (civil No. R-4729). He complained that he was dismissed by the appellees City Mayor and Assistant City Engineer unlawfully—without cause, without hearing and in disregard of the provisions of Executive Order No. 370, series of 1941, prescribing the procedure in the investigation of administrative cases. In their answer with a counterclaim for compensatory, moral and exemplary damages in the sum of P25,000, filed on 19 September 1956, the respondents denied the petitioner's averments and set up the affirmative defense that as the petitioner's employment was temporary, he could be dismissed at anytime with or without cause. After hearing, on 18 June 1958 the Court rendered judgment sustaining the respondents' position and dismissing the petitioner's petition for mandamus, with costs against him. On 26 June 1958 the petitioner filed a "motion for reconsideration and to set aside the decision dated June 18, 1958" and the respondents, an objection thereto. On 28 June 1958 the Court denied the petitioner's motion for reconsideration. Hence this appeal.

Since 8 January 1947 Lazaro Booc was a laborer employed in the Office of the City Engineer of Cebú as General Carpenter Foreman, General Building Foreman, General Foreman, General Bridge Foreman, Building Foreman, General Road Foreman and General Bridge Foreman, in succession, in various national and city public works projects (Exhibits B to Z, inclusive). His last appointment was as General Bridge Foreman "to supervise laborers working on the maintenance of national and city bridges" for the period from 1 July 1956 to 30 September 1956, at the rate of P7.50 a day. On 27 August 1956 the appellee Mayor dismissed the appellant for dishonesty and serious misconduct in office for soliciting and accepting wage cuts from his subordinates, effective upon receipt of notice, without prejudice to further investigation to determine his criminal liability (Exhibits AA and BB-1). On 28 August 1956 the appellant wrote to the appellee Mayor protesting his dismissal on the ground that he was not afforded the chance to be heard and that being an employee in the unclassified branch of the Civil Service, the power to dismiss him for cause is lodged not in the appellee Mayor but in the Secretary of Public Works and

Communications or the Commissioner of Civil Service; and requesting for a formal investigation of the alleged charges against him (Exhibit 2). On 29 August 1956 the appellee Mayor referred for comment the appellant's letter to the Chief of Police (Exhibit 3), who on the same date in turn indorsed it to the Chief, Legal and Investigation Section (Exhibit 4). On 30 August 1956, the last mentioned officer forthwith explained to the Chief of Police, Cebú City, that at the investigation conducted by him at about 3:00 o'clock in the afternoon of 19 March 1956, after the appellant had been caught by detective Lorenzo de los Reyes in the act of receiving the amount of P8 in one-peso bills from the complainant, Belarmino Rotollos, the latter together with Silverio Gabucan and the arresting officer were interrogated by him and by Juanito G. Cabaluna, the legal assistant of the chief of the Complaints and Investigation Division of the Office of the Mayor, in the presence of the appellant who cross-examined the complainant and Silverio Gabucan; that after the cross-examination, the appellant requested that the investigation be postponed and that he be afforded the opportunity to be assisted by counsel and present his witnesses; that the postponement requested was granted; that on 23 April 1956, the date set for the resumption of the investigation, the appellant assisted by attorney Porfirio Ellescas appeared and was confronted with the testimony of the witnesses for the prosecution and asked whether he would present witnesses in his behalf, to which question his attorney answered that he would; that five witnesses, 4 carpenters and a laborer who worked on the Kinalunsan Bridge under the appellant, testified that no such wage cut or bribe money was exacted from them by the appellant; that the latter explained that the money he received from Belarmino Rotollos was in payment of a debt to him; that despite such testimony the Chief of the Legal and Investigation Section was of the belief that there was prima facie evidence against the appellant (Exhibit 5). On 26 March 1956 the Chief of Police indorsed to the Complaints and Investigation Division of the Mayor's Office "the Police Worksheet" of the appellant's case which was the basis of the legal assistant's recommendation to the appellee Mayor to dismiss the appellant from the service (Exhibit 7).

On 29 August 1956 the appellee Assistant City Engineer, for the City Engineer, advised the petitioner of the termination of his services as Bridge Foreman effective upon receipt of the letter of the respondent Mayor for causes stated therein (Exhibits AA and BB-1) and ordered him to turn over all his property responsibility to the general maintenance foreman. The same officer advised the petitioner that he could appeal from his dismissal to the department head, the Secretary of Public Works and Communications (Exhibit BB).

The appellant insists that as an employee in the unclassified branch of the Civil Service, he has acquired a permanent status and could not be removed except for cause provided for by law after hearing and that the appellee Mayor has no power to remove him from the service.

The appellant's claim is without merit. The appellee Assistant City Engineer, acting in behalf of the City Engineer, gave effect to the appellant's dismissal for the reasons stated by the appellee Mayor (Exhibit BB). He should have appealed to the proper department head, the Secretary of Public Works and Communications, as provided for in section 21, Commonwealth Act No. 58. This the appellant failed to do. Well known is the doctrine that an aggrieved party should first exhaust all administrative remedies before resorting to court action. Hence the appellant's petition for mandamus must fail.

Moreover, in the appellant's last appointment as General Bridge Foreman the following notation appears: "IT IS UNDERSTOOD THAT THE EMPLOYMENT OF THE LABORERS CONCERNED WILL CEASE AUTOMATICALLY AT THE END OF THE PERIOD OF EMPLOYMENT STATED ABOVE. SUBJECT TO ROTATION, TRANSFER, AND/OR LAY-OFF ANYTIME AT THE DISCRETION OF THE CITY ENGINEER." The project on which the appellant was working and for which the corresponding funds have been appropriated is stated as "No. NC-9, B 2-2(82) JJ-27, Title: Maint. of Nat'l roads and City Streets." At the time of his appointment on 26 June 1956, out of the appropriation of P480,620.08 for the said project, after deducting the

sum of P459,435.01 actual expenses and obligations incurred, only a balance of P21,185.07 remained (Exhibits Z and 1). These facts indicate the temporary nature of his appointment and position, terminable at the end of the period of employment stated in the appointment or by reason of rotation, transfer and/or lay-off anytime at the discretion of the City Engineer. This must be so for the appellant's job depends, among others, upon the availability of funds. The appellant is not covered by the mantle of protection against arbitrary dismissals afforded to permanent employees holding permanent items.

The judgment appealed from is affirmed, with costs against the appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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