

SINFORIANO V. URGELIO, JOSE V. ENCABO, AND JORGE M. VILLARIN, PETITIONERS, JOSE V. ENCABO AND JORGE M. VILLARIN, PETITIONERS-APPELLANTS, VS. SERGIO OSMENA, JR., THE MUNICIPAL BO...

G.R. No. 14908. October 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Cebu dated 4 December 1957, dismissing the petition for mandamus filed by herein appellants.

The facts are stipulated. The individual respondents mentioned by names in the caption were officials of the city government of Cebu who assumed their respective positions on January 1, 1956. Sergio Osmeña Jr. was the City Mayor, Ramon Duterte was the Vice-Mayor and the rest, City Councilors. Sinforiano V. Urgelio (one of petitioners below but apparently not appellant here) was a laborer in the office of the City Mayor since June 1946 with compensation at the rate of P4.70 daily. Appellants Jose V. Encabo and Jorge Villarin were also employed in the same office as office helper and laborer, with compensation at the rates of P4.80 and P4.50 daily, respectively. Encabo had been there since May 1948; Villarin since April 1954. All three were performing clerical duties and were members of the Government Service Insurance System, showing the permanent character of their tenures.

On 5 January 1956 the Municipal Board of the City of Cebu passed a resolution creating thirty five (35) new positions in the office of the City Mayor, several of which were for laborers, janitors and informers. A little over a month later, or on 10 February 1956, the Municipal Board passed Ordinance No. 192, abolishing a number of positions in the same office, among them those held by petitioners. On 23 February 1956 the Mayor sent them written notices of the termination of their services, effective at the close of business hours on the following March 15, in view of the abolition of their positions under Ordinance No. 192. They protested such termination in letters to the Commissioner of the Civil Service and the Executive Secretary, dated 6 August and 10 October 1956, respectively. No replies were received by them; and so on 5 December 1956 they commenced the instant proceeding in the Court of First Instance of Cebu, praying that the abolition of their positions be declared void and without force and effect; that they be reinstated; that they be paid their salaries from the date of their separation; and that respondents be ordered to pay moral and exemplary damages as well as attorney's fees. By amended petition dated 27 June 1957, the City of Cebu was included as party-respondent.

The main ground alleged in the petition and urged by appellants in this appeal is that the abolition of their positions was done in bad faith and in violation of the law and Constitution. There is no question that the municipal board of the city of Cebu had the power to legislate in regard to fixing the number and salaries of officials and employees not provided for in the City Charter (Sec. 17, Commonwealth Act No. 58). Appellants' positions not being among those enumerated in the charter, they were subject to the power thus granted. The exercise of such power, however, has a recognized exception, namely, that the abolition of an office or position

must be in good faith and not characterized by fraud and improper motives. It cannot be resorted to as a means to remove the incumbents in violation of the civil service law.[1]

The present case falls within the exception.

Ordinance No. 192 was ostensibly enacted for reasons of economy and efficiency. But economy may be ruled out, because not only had 35 new positions been created a little over a month prior to the enactment of the said ordinance, but after appellants' positions were abolished sixteen additional ones were again created and increases in salaries of employees in the Mayor's office were provided for. If the intention were not really to ease out petitioners from their positions they could have been accommodated in the new items thus created. It can not be said that their services were no longer needed, because as it appears in the stipulation of facts submitted to the court a quo, the same duties they had been performing prior to their separation continued to be performed by other employees.

The same Ordinance No. 192 has been the subject of another case similar to the one at bar and decided by this Court on 24 September 1958 (Concepcion Briones et al. vs. Sergio Osmeña, Jr., et al., 104 Phil., 588). In that decision we found that "the reasons given for the abolition of the positions of the appellees (alleged to be economy and efficiency) are untrue and constitute a mere subterfuge for the removal without cause of the said appellees, in violation of the security of Civil Service tenure as provided by the Constitution."

In view of the foregoing, the judgment appealed from is reversed and the writ prayed for is granted. The abolition of appellants' positions is declared null and void and respondent City of Cebu is ordered to reinstate them therein or to equivalent positions; to pay them their back wages or salaries since the date of their separation, less whatever they have earned from other employment in the interim, to be determined upon proper hearing before the court a quo. Respondents are also ordered to pay appellants the sum of P1,000.00 as attorney's fees, plus costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

[1] The statutes relating to civil service have for their primary purpose economy and efficiency in the public service. The secondary purpose is permanent tenure in office for those employed in such service. The power to create a position in the classified civil service includes the power to abolish such position. Therefore any position in the classified civil service may be abolished by the employing officer if such act is done in good faith solely for purposes of economy and more efficient public service. In *State ex rel. Stine vs. McCaw*, Chief of Divs. of Aid for Aged, 137 Ohio St., 13, 27 N.E. 2d 488, 489, Matthias, J., states the law as follows: "An order abolishing a civil service position is ineffective where a new appointee is named to perform the same duties; but where there is a substantial merger of two positions for the purpose of economy with no proof of ulterior motive or purpose on the part of the employing officer, or discrimination upon political, religious or other improper grounds, a writ of mandamus will not be granted to require reinstatement of employee discharged as a result of such merger." *State ex. rel. Stoer vs. Raschig*, 49 N.E. 2d 56.

In the last analysis the power of the Legislature to truncate the incumbency of one who has been appointed for a fixed term will be found to depend on the purpose for which it was done. On no other basis can the various concepts of legislative power under constitutional provisions such as ours be reconciled or fitted together with the power given the executive. We shall endeavor to illustrate this thesis by what follows:

* * * * *

If it abolishes one office and puts in its place another by the same or a different name but with substantially the same duties, it will be considered a device to unseat the incumbents. If on the other hand it abolishes two or more offices with substantially the same duties or different duties and bona fide combines the duties under an office with the same name as one of the abolished offices or under a different name or abolishes an office and distributes its duties among other offices for reasons of economy or genuine reorganization, the abolition is permissible.

* * * * *

If the newly created office has substantially new, different or additional functions, duties, or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy are given to an existing officer or office.

* * * * *

But if the functions, duties, and powers are substantially those of the office abolished, the abolition will be considered merely colorable and the pretended new office be considered in actuality a continuation of the old one. Consequently, where one office is purported to be abolished and a new office purported to be set up the courts will examine the entire transaction for purpose or motive. See *Cusack vs. Board of Education*, supra; *State ex rel. Birdsey vs. Baldwin*, supra; *McChesney vs. Trenton*, supra. If the functions, duties or powers are substantially the same it will be a strong indication that the purpose was to abolish the officer and not the office, but where offices are abolished and new ones set up in a general scheme of reorganization, abolition, merger, rearrangement or consolidation genuinely based on reasons of economy or efficiency, the court, if convinced that the purpose was that, will not interfere even though officers in the affected reorganization evolve with some offices whose function, duties, or powers are substantially like those which were abolished. It is essentially a matter of good faith. *State ex rel. Hammond vs. Maxfield* 132 P. 2d 660.

A municipal office is not property in the constitutional sense, and the Legislature may abolish an office during the term for which the incumbent was elected or appointed without violating any of his constitutional rights. So also an office created by municipal ordinance may be abolished by ordinance, and the incumbent ceases to be an officer. Even when an officer by reason of having been appointed for a definite term, or by special statutory provision, cannot be lawfully removed except for cause after a full hearing, his office may be summarily abolished whenever the proper municipal authorities deem it advisable. In such case, however, the office must be abolished in good faith, and if immediately after the office is abolished another office is created with substantially the same duties and a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will interfere. 19 R.C. L. 936.

RESOLUTION

Feb. 28, 1964

MAKALINTAL, J.:

Respondents move for reconsideration of the Court's decision of October 31, 1963 ordering respondent City of Cebu to reinstate petitioners to their positions and to pay them back salaries since the date of their separation, less whatever they have earned from other employment in the interim, to be determined upon proper hearing before the court of origin.

Respondents claim that petitioners should not be reinstated to their former positions, first because they are not civil service eligibles; and, second, because they are deemed to have acquiesced to the termination of their services.

As has been stated in the decision, petitioners, though not civil service eligibles, were members of the Government Service Insurance System, which fact shows the permanent character of their tenure. It does not appear that their appointments were temporary; indeed, their separation was not based on that ground but on the abolition of their positions, carried out in bad faith and solely for the purpose of removing them.

Contrary to respondents' theory, the fact that petitioners received their terminal pay cannot be considered as a waiver of their right to question the termination of their services. The case of *Magana vs. Agregado*, 107 Phil., 900, (58 Off. Gaz., No. 4, p. 654), relied upon by movants, is not here applicable. The ruling in said case, adopting that laid down in *Lopez vs. Namarco*, 101 Phil., 347, is that the dismissed employee was estopped to question the validity of the resolution abolishing his position because he had previously accepted the gratuity provided for in the same resolution. But no such estoppel obtains in this case, as there was no gratuity provided for in the resolution which petitioners here received or could have received.

Respondents also question petitioner's right to back salaries on the strength of Section 5 of the Charter of the City of Cebu, C.A. No. 58, as amended. The said provision does not apply in this case, because the obligation of the City of Cebu to pay petitioners' back salaries is not a liability "for damages or injuries to person or property arising from the failure of the Mayor, the Vice Mayor, the Municipal Board, or any other city officer, to enforce the provisions of the Charter, or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions."

The case of *Faunillan vs. Del Rosario*, G.R. No. L-9447 August 23, 1956, is cited by petitioners. But in a number of other cases, involving also employees of the City of Cebu, this Court has invariably granted back salaries to illegally dismissed employees. In three cases prior to the *Faunillan* case (*Mission vs. Del Rosario* (94 Phil., 483), 50 Off. Gaz., No. 4, p. 1571; *Abella vs. Rodriguez* (95 Phil., 289), Off. Gaz., No. 7, p. 3039; *Uy vs. Rodriguez* (95 Phil., 493), 50 Off. Gaz., No. 8, p. 3574], the City of Cebu was ordered to pay arrears in salary to detectives of the city police department who had been illegally separated from the service. And in two instances subsequent to that of *Faunillan* (*Gacho vs. Osmena*, 103 Phil., 837; and *Briones vs. Reyes*, 104 Phil., 588), the same city was required to reinstate, with back salaries, employees whose positions had been wrongfully abolished.

Wherefore, the motion for reconsideration is hereby denied.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, J.J., concur.

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