

TEOFILO ARCEL AND JUAN CALINAWAN, PETITIONERS AND APPELLANTS, VS. SERGIO OSMEÑA, JR., ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 14956. February 27, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

On March 15, 1957, a petition for mandamus with preliminary injunction and/or damages was instituted in the Court of First Instance of Cebu by Teofilo Arcel and Juan Calinawan, to compel Sergio Osmeña, Jr., in his capacity as mayor, the municipal board, the treasurer, and the auditor, all of Cebu City, to reinstate petitioners to the positions of watchman and skilled laborer, respectively and to pay their back salaries. The respondents in due time filed their answer. Thereafter, the parties, through their respective counsel, submitted to the court a stipulation of facts which, insofar as pertinent to the present case, is hereunder partly reproduced:

"1. The petitioner, Teofilo Arcel, a USAFEE Veterans of the Second World War, was originally appointed to the unclassified position of Watchman in the Office of the City Treasurer, Cebu with compensation at the rate of P2.00 per day, effective January 4, 1947, by former Mayor of Cebu City, Vicente S. del Rosario. Later on, his daily wage was increased to P2.70 per day, effective July 1, 1951 by then Acting Mayor of Cebu City, Pedro Elizalde. Finally, his daily wage was increased to P4.00 per day effective July 1, 1952, by former Mayor of Cebu City, Jose V. Rodriguez, to comply with the provisions of the Minimum Wage Law.

* * * * *

"2. On December A, 1956, while the petitioners, Teofilo Arcel, now insured since July 31, 1947, and Juan Calinawan, also insured since July 1, 1952, were discharging the duties assigned to them in the service of the Government of the City of Cebu, Ordinance No. 220, the General Fund Budget of the City of Cebu for the fiscal year beginning July 1, 1956, and ending June 30, 1957, was enacted and approved. Said Ordinance reduced the total number of Watchmen from Item '59. Two (2) Watchmen at P4.00 each per day under the Office of the City Treasurer, (as provided for by the previous General Fund Budget of the City of Cebu under Ordinance No. 200) to Item '40. One (1) Watchman at P1,440.00 per annum, under Department of Finance, Administrative Division, Property Section, in the Office of the City Treasurer, City of Cebu. * * *

"3. On January 5, 1956, the petitioners received from the respondent Sergio Osmeña, Jr. two (2) similarly worded termination and removal orders, the one for Teofilo Arcel, dated December 31, 1956, and the other, for Juan Calinawan, dated December 29, 1956, both substantially, to wit:

'Sir:

In view of the abolition of your position pursuant to Ordinance No. 220, as published in two (2) newspapers of general circulation in the City, please be advised that your services are hereby terminated at the close of office hours on December 31, 1956.

Respectfully,

(Sgd.) Sergio Osmeña, Jr.

City Mayor'

Immediately upon receipt of the aforementioned orders, the petitioners pleaded with the respondent Mayor, Sergio Osmeña, Jr., to reconsider and withdraw said orders; but the respondent refused to withdraw said termination orders.

* * * * *

"5. On January 10, 1957, while serving the government, the petitioners received two (2) similarly worded 'appointments' from the respondent Mayor, both dated December 29, 1956, the one 'appointing' Teofilo Arcel as 'Clerk-Collector in the Office of the City Treasurer, Municipal License Section, Municipal License and Realty Tax Division, with compensation at the rate of P1,440.00 per annum, effective January 1, 1957, and good until revoked under, Finance Department, chargeable to Item No. 98, General Fund Budget, 1956-57.'

"6. On December 29, 1956, while the petitioners were still in the service, the respondent Mayor Sergio Osmeña, Jr., issued an 'appointment' to Catalino Lañete 'appointing' him as 'Watchman, Property Section, Administrative Division, in the Office of the City Treasurer of Cebu, City of Cebu, with compensation at the rate of P1,440.00 per annum effective January 1, 1957, and good until revoked chargeable to Item No. 40, Property Section, Administrative Division, in the Office of the City Treasurer of Cebu, City of Cebu, with compensation at the rate of P1,440.00 per annum effective January 1, 1957, and good until revoked, chargeable to Item No. 40, Property Section, Administrative Division, Finance Department, General Fund Budget, 1956-57' * * *. The above-mentioned 'appointees', consequently, qualified for their positions. Thereafter, the respondents City Treasurer and City Auditor, stopped the payment of the salaries of petitioners.

"The parties respectfully submit the foregoing Stipulation of facts as their partial evidence of the case, hereby reserving unto themselves the right to present additional evidence they may deem proper to arrive at a just determination of the present action."

Upon the above facts and other additional evidence presented during the trial, the court below rendered judgment dismissing the petition, on the ground that the Municipal Board of Cebu has authority to reduce the number of, or even abolish, positions in the service of the city government; that there is no evidence that in the exercise of such discretion by the Board, there was fraud or abuse of power; that petitioners are not civil service eligibles; that the City of Cebu, which is an indispensable party, was not included in the complaint, that there was non-exhaustion of administrative remedies, petitioners having failed to bring the action of the Mayor to the attention of the President. From this judgment, only Teofilo Arcel has appealed by means of the instant petition for certiorari.

It appears from the abovequoted stipulation of facts that in the budget of the City of Cebu for the fiscal year beginning July 1, 1956 and ending June 30, 1957, the total number of Watchmen was reduced from "Two (2) Watchmen at P4.00 each per day" to "One (1) Watchman at P1,440.00 per annum" (No. 2, Stipulation); that neither of the occupants of the original two positions of watchman in the 1955-56 was appointed to the same item, as reduced, thus resulting in their being separated from the service; and that said position, Item 40 of the 1956-57 budget, was filled in by a certain Catalino Lañete on December 29, 1956 (No. 6, Stipulation). The issue involved in the instant case, therefore, is whether the dismissal of the occupants of the original positions, Teofilo Arcel specifically, is lawful or not.

There is no question that under its charter (Com. Act 58), the Municipal Board of Cebu has authority to reduce the number of or even abolish positions in the service of the said city government. Such right, however, it was declared by this Court, can not be used to discharge employees in violation of the civil service law.[1] (Gacho vs. Osmeña, 103 Phil., 837; 55 Off. Gaz., [48] 1007; Briones vs. Osmeña, 104 Phil., 588).

It is true that, as found by the trial court, there is no evidence that petitioner Teofilo Arcel is a civil service eligible. However, it appearing that Arcel was appointed to an unclassified position (No. 1, Stipulation), his lack of eligibility did not remove him from the operation and protection of the civil service law. As pronounced by this Court in the case of Lacson vs. Romero, 84 Phil., 740; 47 Off. Gaz. 1778, Article XII of the Constitution, which contains the provisions on Civil Service, contemplates the entire Civil Service regardless of whether the employees embraced therein belong to the classified or unclassified service. Officers and employees in the unclassified service, like those occupying classified positions, are protected by the aforementioned provision of the organic law. As Item No. 40 of the 1956-57 budget is not an entirely new item but the same item in the 1955-56 budget, although reduced, previously occupied by Teofilo Arcel and Narciso Cabarrubias, who were in the service since January 4, 1947, and December 18, 1953, respectively, said position should have been filled in by Teofilo Arcel who is the more senior of the two and is preferred for being a veteran,[2] instead of putting in a new appointee.

Herein respondents also capitalize on the fact that prior to his separation, petitioner Arcel was extended an appointment as Clerk-Collector in the Office of the City Treasurer, with compensation at P1,440.00 per annum, which Arcel refused to accept, to bolster their contention that the City Mayor did not abuse his descretion in terminating petitioner's services. In this regard, it may be pointed out that the appointment being offered to petitioner was made "effective January 1, 1957, and good until revoked". Clearly, it is temporary appointment the tenure of which is dependent upon the will of the appointing power. Petitioner Arcel is, therefore, justified in refusing to accept the same. Having been occupying a permanent position from which he was removed, his acceptance of a temporary appointment thereafter would have barred him from questioning his previous dismissal.[3]

Anent the matter of non-inclusion of the City of Cebu as party-respondent in the petition for reinstatement and back wages, we have already held that the naming of the City Mayor, Municipal Board, City Treasurer, and City-Auditor in the petition is substantial compliance with the law.[4] There is no reason in this instance why we should depart from said ruling.

In view of the foregoing considerations, the decision of the lower court is set aside and another one hereby entered, ordering the City Mayor of Cebu City to reinstate herein petitioner to the position of Watchman in the Office of the City Treasurer, then Item 40 in the 1956-57 budget, or the corresponding item in the current budget, with back salaries. Without costs. So ordered.

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

[1] "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." (Art. XII, Sec. 4, Philippine Constitution; also Sec. 694 Revised Administrative Code, as amended by Com. Act 177 and Rep. Act 2260.)

[2] Rep. Act 68, as amended by Rep. Act 154; Ribo vs. Orais, 49 Off. Gaz., 5386; Inocente vs. Ribo, 94 Phil., 652; 50 Off. Gaz., 4853.

[3] Pinullar vs. President of the Senate, 104 Phil, 131; 65 Off. Gaz., 3488; Roque vs. President of the Senate,

L-10949, July 25, 1958.

[4] Velasco vs. Court of Appeals 108 Phil., 449.

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