

NILO PALOMA, PETITIONER, VS. DANILO MORA, HILARIO FESTEJO, MAXIMA SALVINO, BRYN BONGBONG AND VALENTINO SEVILLA, RESPONDENTS.

G.R. NO. 157783. September 23, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this petition for review on certiorari, petitioner NILO PALOMA is in quest of the reversal of the Decision[1] and the Resolution,[2] dated 15 November 2002 and 01 April 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 42553, affirming in toto the Orders dated 12 March 1996 and 28 June 1996 of the Regional Trial Court (RTC), Branch 17, Palompon, Leyte, in Civil Case No. PN-0016, dismissing his complaint for mandamus for being prematurely filed.

The undisputed facts, as summarized by the Court of Appeals and as unraveled from the records, follow:

Petitioner Nilo Paloma was appointed General Manager of the Palompon, Leyte Water District by its Board of Directors in 1993. His services were subsequently terminated by virtue of Resolution No. 8-95[3] dated 29 December 1995, which was passed by respondents as Chairman and members of the Board of the Palompon, Leyte Water District, namely: Danilo Mora, Hilario Festejo, Bryn Bongbong and Maxima Salvino, respectively. The Board, in the same Resolution, designated respondent Valentino Sevilla as Officer-in-Charge.[4]

Pained by his termination, petitioner filed a petition for mandamus[5] with prayer for preliminary injunction with damages before the RTC on 11 January 1996 to contest his dismissal with the prayer to be restored to the position of General Manager.[6]

Petitioner obdurately argued in his petition that the passage of Resolution No. 8-95 resulting in his dismissal was a "capricious and arbitrary act on the part of the Board of Directors, constituting a travesty of justice and a fatal denial of his constitutional right to due process for the grounds relied upon therein to terminate him were never made a subject of a complaint nor was he notified and made to explain the acts he was said to be guilty of." "Fundamental is the rule and also provided for in the Civil Service Rules and Regulations that no officer or employee in the Civil Service shall be suspended, separated or dismissed except for cause and after due process," so stressed petitioner.[7]

On 25 January 1996, respondents filed a Motion to Dismiss the petition for lack of jurisdiction and want of cause of action.[8]

On 12 March 1996, the trial court issued the assailed order dismissing the petition, with the fallo:

WHEREFORE, all foregoing considered, the complaint thus filed for mandamus with a Prayer for a Writ for Preliminary Injunction with Damages is hereby DISMISSED for being a premature cause of action. Without pronouncement as to costs.[9]

Petitioner's motion for reconsideration likewise failed to sway the trial court by Order dated 28 June 1996.[10]

Meanwhile, petitioner filed a Complaint on 29 March 1996 with the Civil Service Commission (CSC) against same respondents herein, for alleged Violation of Civil Service Law and Rules and for Illegal Dismissal.[11]

On 06 November 1996, the CSC issued its decision[12] exonerating respondents from the charge of violating the Civil Service Law when they voted for the termination of petitioner's services as General Manager of the Palompon, Leyte Water District. Thus, the CSC dismissed[13] the complaint filed by petitioner before it, to wit:

In view of the foregoing, the instant complaint of Mr. Nilo Paloma former General Manager of Palompon Water District against Messrs. Danilo Mora, Hilario Festejo, Bryn Bongbong and Ms. Maxima Salvino for Violation of Civil Service Law and Rules and Illegal Dismissal is hereby DISMISSED, for lack of prima facie case.[14]

In its Decision[15] dated 15 November 2002, the Court of Appeals yielded to the decision of the trial court and dismissed the appeal filed by petitioner, viz:

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. Accordingly, the assailed Orders of the Regional Trial Court dated 12 March 1996 and 28 June 1996 in Civil Case No. PN-0016, are AFFIRMED in toto.[16]

Equally unavailing was petitioner's motion for reconsideration, which was denied by the Court of Appeals on 01 April 2003.

Affronted by the ruling, petitioner elevated the matter to us via the instant petition, contending that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF PALOMPON, LEYTE, BRANCH 17.[17]

The central inquiry raised in this petition is whether or not the Court of Appeals committed any reversible error in its challenged decision. Concretely, we are tasked to resolve: (1) whether or not mandamus will lie to compel the Board of Directors of the Palompon, Leyte Water District to reinstate the General Manager thereof, and (2) whether or not the CSC has primary jurisdiction over the case for illegal dismissal of petitioner.

Petitioner, in his brief, is emphatic that the Court of Appeals overlooked the fact that mandamus may lie to compel the performance of a discretionary duty in case of non-observance of due process. He enthuses that the Court of Appeals overlooked the fact that as an aggrieved party, he need not exhaust administrative remedies and may resort to court action for relief as due process was clearly violated.[18]

Espousing a contrary view, respondents posit that petitioner breached the rule against forum shopping as he filed another complaint for illegal dismissal against them with the CSC after obtaining an unfavorable ruling in his Petition for Mandamus filed before the RTC.[19] Not only is petitioner guilty of forum shopping; he, too, is guilty of submitting a false certificate against forum shopping as the certification he appended with the present petition omitted the fact that he had previously filed a similar case with the CSC, so respondents say.[20] Respondents theorize, as well, that the instant case has already been rendered moot by the dissolution of the Palompon, Leyte Water District and its subsequent absorption by the municipal government of Palompon effective 1 June 1999.[21] Finally, it is respondents' resolute stance that it was fitting for the Court of Appeals to affirm the trial court's ruling dismissing the petition filed by petitioner inasmuch as Section 23 of Presidential Decree (P.D.) No. 128 indeed clearly states that the General Manager shall serve at the pleasure of the Board.[22]

We are not won over by petitioner's avowals. The petition ought to be denied.

Section 3, Rule 65 of the Rules of Court provides-

Sec. 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Mandamus lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty.[23] Mandamus will not issue to control or review the exercise of discretion of a public officer where the law imposes upon said public officer the right and duty to exercise his judgment in reference to any matter in which he is required to act. It is his judgment that is to be exercised and not that of the court.[24]

In the case at bar, P.D. No. 198,[25] otherwise known as THE PROVINCIAL WATER UTILITIES ACT OF 1973, which was promulgated on 25 May 1973, categorically provides that the general manager shall serve at the pleasure of the board of directors, viz:

Section 23. Additional Officers. - At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall serve at the pleasure of the board.

Section 23 of P.D. No. 198 was later amended by P.D. No. 768 on 15 August 1975 to read:

SEC. 23. The General Manager. - At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall serve at the pleasure of the board. (Emphasis supplied)

Mandamus does not lie to compel the Board of Directors of the Palompon, Leyte Water District to reinstate petitioner because the Board has the discretionary power to remove him under Section 23 of P.D. No. 198, as amended by P.D. No. 768.

The case of *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.*[26] delineated the nature of an appointment held "at the pleasure of the appointing power" in this wise:

An appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office. The protection afforded by Section 7.04 of the Code of By-Laws on Removal Of Officers and Employees, therefore, cannot be claimed by petitioner.[27] (Emphasis supplied)

In fine, the appointment of petitioner and his consequent termination are clearly within the wide arena of discretion which the legislature has bestowed the appointing power, which in this case is the Board of Directors of the Palompon, Leyte Water District. Here, considering that the petitioner is at loggerheads with the Board, the former's services obviously ceased to be "pleasurable" to the latter. The Board of Directors of a Water District may abridge the term of the General Manager thereof the moment the latter's services cease to be convivial to the former. Put another way, he is at the mercy of the appointing powers since his appointment can be terminated at any time for any cause and following *Orcullo* there is no need of prior notice or due hearing before the incumbent can be separated from office. Hence, petitioner is treading on shaky grounds with his intransigent posture that he was removed sans cause and due process.

Yes, as a general rule, no officer or employee of the civil service shall be removed or suspended except for cause provided by law as provided in Section 2(3), Article IX-B of the 1987 Constitution. As exception to this, P.D. No. 198, which we held in *Feliciano v. Commission On Audit* [28] to be the special enabling charter of Local Water Districts, categorically provides that the General Manager shall serve "at the pleasure of the board."

Correlatively, the nature of appointment of General Managers of Water Districts under Section 23 of P.D. No. 198 falls under Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987, which provides:

Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The co-terminous status may thus be classified as follows:

- (1) Co-terminous with the project - when the appointment is co-existent with the duration of a particular project for which purpose employment was made or subject to the availability of funds for the same;
- (2) Co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority or at his pleasure;
- (3) Co-terminous with the incumbent - when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent the position shall be deemed automatically abolished; and
- (4) Co-terminous with a specific period - appointment is for a specific period and upon expiration thereof, the position is deemed abolished; . . . (Underscoring supplied.)

The Court has previously sustained the validity of dismissal of civil servants who serve at the pleasure of the appointing power and whose appointments are covered by Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292 as cited above. Thus, in *Orcullo, Jr. v. Civil Service Commission*, [29] petitioner was hired as Project Manager IV by the Coordinating Council of the Philippine Assistance Program-BOT Center. In upholding the termination of his employment prior to the expiration of his contract, we held that petitioner serves at the pleasure of the appointing authority. This Court ruled in *Orcullo* –

A perusal of petitioner's employment contract will reveal that his employment with CCPAP is qualified by the phrase "unless terminated sooner." Thus, while such employment is co-terminous with the PAPS project, petitioner nevertheless serves at the pleasure of the appointing authority as this is clearly stipulated in his employment contract. We agree with the appellate court's interpretation of the phrase "unless terminated sooner" to mean "that his contractual job as Project Manager IV from March 11, 1996 to January 30, 2000 could end anytime before January 30, 2000 if terminated by the other contracting party-employer CCPAP. (Emphasis supplied)

Neither is it the Court's business to intrude into the Congressional sphere on the matter of the wisdom of Section 23 of P.D. No. 198. One of the firmly entrenched principles in constitutional law is that the courts do not involve themselves with nor delve into the policy or wisdom of a statute. That is the exclusive concern of the legislative branch of the government. When the validity of a statute is challenged on constitutional grounds, the sole function of the court is to determine whether it transcends constitutional limitations or the limits of legislative power. No such transgression has been shown in this case.[30]

Moreover, laws change depending on the evolving needs of society. In a related development, President Gloria

Macapagal-Arroyo inked into law Republic Act No. 9286, which amended Section 23 of P.D. No. 198 providing that thereafter, the General Manager of Water Districts shall not be removed from office, except for cause and after due process. Rep. Act No. 9286 reads:

Republic Act No. 9286

AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS "THE PROVINCIAL WATER UTILITIES ACT OF 1973", AS AMENDED

Approved: April 2, 2004

...

Sec. 2. Section 23 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

Sec. 23. The General Manager. – At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process. (Emphasis supplied.)

...

Sec. 5. Effectivity Clause. – This Act shall take effect upon its approval.[31]

Unfortunately for petitioner, Rep. Act No. 9286 is silent as to the retroactivity of the law to pending cases and must, therefore, be taken to be of prospective application. The general rule is that in an amendatory act, every case of doubt must be resolved against its retroactive effect.[32] Since the retroactive application of a law usually divests rights that have already become vested,[33] the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used.[34]

First, there is nothing in Rep. Act No. 9286 which provides that it should retroact to the date of effectivity of P.D. No. 198, the original law. Next, neither is it necessarily implied from Rep. Act No. 9286 that it or any of its provisions should apply retroactively. Third, Rep. Act No. 9286 is a substantive amendment of P.D. No. 198 inasmuch as it has changed the grounds for termination of the General Manager of Water Districts who, under the then Section 23 of P.D. No. 198, "shall serve at the pleasure of the Board." Under the new law, however, said General Manager shall not be removed from office, except for cause and after due process. To apply Rep. Act No. 9286 retroactively to pending cases, such as the case at bar, will rob the respondents as members of the Board of the Palompon, Leyte Water District of the right vested to them by P.D. No. 198 to terminate petitioner at their pleasure or discretion. Stated otherwise, the new law can not be applied to make respondents accountable for actions which were valid under the law prevailing at the time the questioned act was committed.

Prescinding from the foregoing premises, at the time petitioner was terminated by the Board of Directors, the prevailing law was Section 23 of P.D. No. 198 prior to its amendment by Rep. Act No. 9286.

Petitioner, next, heaves censure on the Court of Appeals for subscribing to the trial court's view that the petition for mandamus was prematurely filed. We recall in *Tanjay Water District v. Gabaton*[35] that water districts are government instrumentalities and that their employees belong to the civil service. Thus, "[t]he hiring and firing of employees of government-owned or controlled corporations are governed by the Civil Service Law and Civil Service Rules and Regulations." *Tanjay* was clear-cut on this matter:

... Inasmuch as PD No. 198, as amended, is the original charter of the petitioner, Tanjay Water District, and respondent Tarlac Water District and all water districts in the country, they come under the coverage of the

civil service law, rules and regulations. (Emphasis supplied)

Underlying the rulings of the trial and appellate courts in the case at bar is the doctrine of primary jurisdiction; i.e., courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[36] In *Villaflor v. Court of Appeals*,[37] we revisited the import of the doctrine of primary jurisdiction, to wit:

In recent years, it has been the jurisprudential trend to apply this doctrine to cases involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in character. . .

In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. In *Machete vs. Court of Appeals*, the Court upheld the primary jurisdiction of the Department of Agrarian Reform Adjudicatory Board (DARAB) in an agrarian dispute over the payment of back rentals under a leasehold contract. In *Concerned Officials of the Metropolitan Waterworks and Sewerage System vs. Vazquez* [240 SCRA 502], the Court recognized that the MWSS was in the best position to evaluate and to decide which bid for a waterworks project was compatible with its development plan. (Emphasis supplied)

In a surfeit of cases, this Court has held that quasi-judicial bodies like the CSC are better-equipped in handling cases involving the employment status of employees as those in the Civil Service since it is within the field of their expertise.[38] This is consistent with the powers and functions of the CSC, being the central personnel agency of the Government, to carry into effect the provisions of the Civil Service Law and other pertinent laws,[39] including, in this case, P.D. No. 198.

WHEREFORE, the present petition is hereby DENIED. Accordingly, the Decision and the Resolution dated 15 November 2002 and 01 April

2003, respectively, of the Court of Appeals in CA-G.R. SP No. 42553, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 19-25. Penned by Associate Justice Eubulo G. Verzola with Associate Justices Jose L. Sabio and Amelita G. Tolentino, concurring.

[2] Rollo, p. 66.

[3] CA Rollo, pp. 22-24.

[4] Rollo, p. 20.

[5] Complaint, CA Rollo, pp. 25-27.

[6] Rollo, p. 20.

[7] Ibid.

- [8] Records, p. 28.
- [9] Records, p. 70.
- [10] Records, p. 72.
- [11] Rollo, p. 48.
- [12] CA Rollo, pp. 28-32.
- [13] Rollo, p. 21.
- [14] CA Rollo, p. 32.
- [15] Rollo, pp. 41-57.
- [16] Rollo, p. 25.
- [17] Rollo, p. 12.
- [18] Rollo, p. 13.
- [19] Rollo, p. 96.
- [20] Rollo, pp. 97-98.
- [21] CA Rollo, pp. 65-70, 72.
- [22] Rollo, p. 98.
- [23] Sps. Camilo and Delia Go v. Court of Appeals, Hon. Marcelino Bautista, et al., G.R. No. 120040, 29 January 1996, 252 SCRA 564. See also Regalado, 1997 Ed, Remedial Law Compendium, p. 715.
- [24] Knecht v. Desierto, G.R. No. 121916, 26 June 1998, 291 SCRA 292, citing Magtibay v. Garcia, et al., G.R. No. L-29871, 28 January 1983, 120 SCRA 370; Avenue Arrastre and Stevedoring Corp., Inc. v. The Hon. Commissioner of Customs, et al., G.R. No. L-44674, 28 February 1983, 120 SCRA 878.
- [25] DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.
- [26] G.R. No. L-48928, 25 February 1982, 243 SCRA 112.
- [27] Id., p. 253.
- [28] G. R. No. 147402, 14 January 2004, 419 SCRA 363.
- [29] G.R. No. 138780, 22 May 2001, 358 SCRA 115, 119-120.
- [30] Fariñas v. The Executive Secretary, G.R. No. 147387, 10 December 2003, 417 SCRA 503.
- [31] http://www.ops.gov.ph/records/ra_no9286.htm
- [32] CIR v. Marubeni Corp., G.R. No. 137377, 18 December 2001, 372 SCRA 576.

[33] *People v. Patalin*, G.R. No. 125539, 27 July 1999, 311 SCRA 186, citing *Benzonan v. Court of Appeals*, G.R. No. 97923, 27 January 1992, 205 SCRA 515.

[34] *Id.*, citing *Balatbat v. Court of Appeals*, G.R. No. 36378, 27 January 1992, 205 SCRA 419.

[35] G.R. No. 84300, 17 April 1989, 172 SCRA 253, 260, citing *Baguio Water District v. Trajano*, G.R. No. L-65428, 20 February 1984, 127 SCRA 730; *Hagonoy Water District v. NLRC*, G.R. No. 81490, 31 August 1988, 165 SCRA 272.

[36] *Villaflor v. Court of Appeals*, G.R. No. 95694, 09 October 1997, 280 SCRA 297, 327.

[37] *Ibid.*

[38] *Pabu-aya v. Court of Appeals*, G.R. No. 128082, 18 April 2001, 356 SCRA 651.

[39] *Constantino-David v. Pangandaman-Gania*, G.R. No. 156039, 14 August 2003, 409 SCRA 80; *Civil Service Law*, Sections. 1 and 12.

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