

PORFIRIO VILLAMOR, ANGEL DE LA CRUZ, DONATO HALILI, JUAN TAON, PEDRO PRIPOCI, ET AL., PETITIONERS AND APPELLANTS, VS. THE HON. ARSENIO H. LACSON, HON. JUAN C. PAJO, EMILIO EJERC...

G. R. No. 15945. November 28, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Sometime in the month of August, 1956, eleven employees of the Department of Public Services, City of Manila, falling under the unclassified civil service, were administratively charged for violation of office regulations, which prohibited drivers and garbage collectors from gathering and selling empty tin cans, refuse and waste papers, etc. Respondent Arsenio H. Lacson, then mayor, found the petitioners herein guilty of the charge and required them to tender their resignations, within 72 hours after receipt of the decision. Not in conformity with the decision, petitioners brought the matter to the Office of the President, pursuant to Sec. 22 of Republic Act 409 of the Manila Charter. On August 5, 1956, due to the refusal of the petitioners to resign, they were ordered to stop working, pending the resolution of their appeal.

During the period of their stoppage of work, they were not paid their salaries.

Under date of November 29, 1957, the Office of the President, decided the appeal, stating:

"In view of the foregoing facts, we are constrained to maintain that the original decision declaring the respondents guilty of the charges herein imputed to them is beyond question.

"WHEREFORE, the decision appealed from is AFFIRMED, with the modification that the suspension of over one year (from August 5, 1956 to date), already suffered by the respondents be considered sufficient punishment. To that effect, their immediate reinstatement in the service, with the exception of driver Margarito Pedrieta, is hereby ordered. Driver Pod riot a is excepted from this order for the reason that he had resigned from the service on August 5, 1955, after receiving notice of the Mayor's decision herein mentioned. However, his reinstatement should be, as it is hereby, left to the discretion of the Mayor,"

The petitioners herein were reinstated on January 15, 1958. Contending that the proper punishment for which petitioners were liable was only suspension, instead of dismissal, they claimed that applying Section 695 of the Administrative Code, such suspension could not last more than two (2) months; and that from August 5, 1956 to January 15, 1958, the date of their reinstatement a period of one (1) year, five (5) months and nine (9) days had elapsed, thus making their suspension in excess of one (1) year, three (3) months and nine (9); days, for which they should be entitled to their salaries. For the excess period, petitioners asked the then Mayor" Lacson for the payment of the corresponding amounts, not as back wages, but as salaries withheld. This matter was referred to the Office of the President, which denied the claim, for the reason that petitioners were not protected and embraced by said Section 695, and, hence, not entitled to the payment of their salaries which accrued during the period they had not worked. The petitioners Presented the instant case of mandamus, to compel respondents to pay their salaries for the period of one (1) year, three (3) months and nine (9) days, plus P1,000.00 by way of

attorney's fees and the costs (Sp. Civil Case No. 39061).

The respondents City Hall officials, contended that for all intents and purposes, petitioners were all considered resigned or dismissed from the service as of August 6, 1956, as a disciplinary penalty; that petitioners were not merely suspended, so that the provisions of Sections 260 and 695 of the Revised Administrative Code, are not applicable to their case; that the Mayor, under the Manila Charter, has the power to impose the punishment in question, but the Office of the President, although agreeing on the finding of guilt of the petitioners, had considered their separation from the service for a period of one (1) year, five (5) months and nine (9) days, as sufficient punishment, in lieu of outright dismissal; and that since petitioners did not perform work during that period, they are not entitled to payment of salaries. The respondent Executive Secretary followed the trend of the defenses interposed by the City Hall officials, and contended that the petition for mandamus did not state any valid and sufficient cause of action against them.

After the filing of the answers, the petitioners moved for a judgment on the pleadings. Under date of June 11, 1959, the lower court rendered judgment on the pleadings, the pertinent portions of which read:

"From the petition of the plaintiff and the motion for judgment of the pleadings, it is presumed that said plaintiffs admitted the truth of the principal allegations of the answers together with legal imputations, to wit:

* * * * *

- That Section 22 of the Revised Charter of the City of Manila (Rep. Act No. 409, as amended), which particularly applies to said city, specifically vests with the respondent Mayor the power to remove, suspend, or otherwise discipline officers and employees of the city government not appointed by the President of the Philippines, and the exercise of said power by respondent Mayor is not subject to the provisions of Section 260 or Section 695 of the Revised Administrative Code, which govern the removal or suspension of all other subordinate officers and employees in (he government service;

- That the President is fully empowered to impose upon petitioners, as punishment, their suspension from the service of "over one year (from August 6, 1956 to date) without pay, for the constitutional authority vested in the President to exercise general supervision over all local governments and to take care that the laws are faithfully executed is broad and pervasive (Planas vs. Gil, G. 11. No. 46440, prom, on January 18, 1939), and its exercise is not subject to or delimited by the provisions of either Section 260 or Section 695 of the Revised Administrative Code;

- That an administrative proceeding like the petitioners' case, an appeal to a higher authority does not have the effect of vacating or suspending the effect of the disputed judgment (Medrana, et al. vs. Domerez, et al., CA-G.R. No. 417-R, June 17, 1950, Court of Appeals Decisions, Vol. I, 1942-1954, p. 128), so that the judgment of respondent Mayor, dismissing petitioners was not vacated or suspended by petitioners' appeal therefrom to the Office of the President, and their dismissal having been affirmed on appeal to the extent of the period that they were out of the service, petitioners can not, validly claim payment of salary for said period, * * * * *;

- That petitioners are laborers paid by the day of actual service, as shown by the certificate of respondent City Public Service Officer Emilio Ejercito hereto attached and made a part hereof as Annex "B" and as by respondent Mayor's judgment they were ordered to stop working on August 6, 1956, they were not entitled to payment of salary for the period that they were out of the service;

* * * * *

IN VIEW OF THE ADMISSION OF THE PETITIONERS of the foregoing material facts alleged in the answer, this Court hereby order judgment dismissing this case for lack of merit. With costs against the

petitioners."

After the denial of the motion for reconsideration, presented by the petitioners, the matter was elevated to this Court on three (3) counts, to wit: the lower court erred-

- (1) in dismissing the complaint on the ground that a movant in a motion for judgment on the pleading admits not only the material allegations, but also the conclusions of law contained in the answer of the adversary;
- (2) in sustaining respondents' contention that the petitioners may be penalized with suspension v it limit pay for a period of one (1) year, five (5) months, and nine (9) days;
- (3) in declaring that the petitioners herein are not protected by the provisions of Section 200 of the Revised Administrative Code, and therefore should not be paid their salaries withheld during their preventive suspension.

There seems to be no serious dispute that the answers of the respondents-appellees contain allegations of fact, as well as conclusions of law. A party who prays for judgment on the pleadings, without offering proofs as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations, taken together with such of his own as are admitted in the pleadings. (*Evangelista vs. de la Rosa*, 76 Phil., 115; *Falcasantos vs. How Suy Ching*, L-4229, May 29, 1952; *Fabella vs. Prov. Sheriff of Rizal*, L-6090, November 27, 1953, cited in *IV Rep. of the Phil. Digest*, p. 309). Consequently, petitioners are deemed to have admitted the truth of the material and relevant allegations in respondents' answers and their legal implications. However, even if it were to be held that petitioners herein did not admit the conclusions of law contained in the answers, we still find in the records sufficient basis to affirm the decision, dismissing the case of petitioners.

In the mind of this Court, the respondent Mayor had the authority to dismiss the petitioners who had been found guilty of violation of office regulations. As far as the Mayor was then concerned, the punishment for such violation was dismissal. The fact that the Office of the President modified the decision from dismissal to a mere separation for one (1) year, five (5) months, and nine (9) days, did not bring the punishment within the purview of a preventive suspension which should be governed by Sec. 395 of the Revised Administrative Code. The fallacy of petitioners' argument springs from their assumption that the modified decision had converted the penalty to that of suspension. The modified decision connotes that although dismissal or resignation would be the proper penalty, the separation from work for the period until their reinstatement, would be deemed sufficient. Said decision did not, in the least, insinuate that suspension should have been the penalty.

It will be noted also that the modified decision did not exonerate the petitioners. And if we take into account the fact that they did not work during the period for which they are now claiming salaries, there can be no legal or equitable basis to order the payment of their salaries. The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As you work, so shall you earn. And even if we consider the punishment as suspension, before a public official or employee is entitled to payment of salaries withheld, it should be shown that the suspension was unjustified or that the employee was innocent of the charges proffered against him (*F. B. Reyes vs. J. Hernandez*, 71 Phil., 397), which is not the case in the instant proceedings.

The action at bar is one of mandamus. For mandamus to lie, the legal right of the petitioner must be well defined, clear and certain, otherwise the petition for the issuance of such writ, will be denied (*III Moran's Comments on the Rules of Court*, 1963 Ed. 172). Petitioners have not shown that they are entitled to the salaries, as a matter of right.

IN VIEW OF ALL THE FOREGOING, the decision dismissing the case is hereby affirmed. Costs taxed against Petitioners.

Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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