

**VICENTE FRAGANTE, PLAINTIFF AND APPELLANT, VS.
PEOPLE'S HOMESITE AND HOUSING CORPORATION,
DEFENDANT AND APPELLEE.**

G.R. No. 16020. January 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

At approximately 35 minutes before midnight on April 4, 1954 on the eve of his 65th birthday when he was to be automatically retired, plaintiff, who was then General Manager and Acting Chairman of the Board of Directors of defendant corporation, was suspended from office pursuant to an order issued by the President on April 3, 1954, the suspension to be "effective immediately and to continue until after the termination of the investigation of the above charges." Defendant corporation and the Government Service Insurance System were notified of plaintiff's suspension and were requested to defer action on plaintiff's request for retirement until further advice from the Office of the President. Accordingly, action on plaintiff's request for retirement was suspended and, while confirming and ratifying such suspension, defendant withheld payment of plaintiff's claim for vacation leave and other retirement privileges. Subsequently, the President appointed Vicente Orosa to replace plaintiff in his vacated position in an acting capacity.

From the time plaintiff was suspended up to the time he was exonerated no formal hearing on the charges was ever conducted, nor was he ever required to file an answer to said charges, but on August 17, 1956, after more than 2 years of suspension, he was absolved on the ground that "after looking into the charges he (the President) was satisfied that the same are without merit."

Upon receipt of his notice of exoneration, plaintiff on August 25, 1956, demanded from defendant the payment of his salary during his suspension and of his additional terminal vacation and sick leaves in the amount of P38,805.83. As this demand was refused, plaintiff commenced the present action in the Court of First Instance of Quezon City seeking to collect the payment of his back salaries corresponding to the period of his suspension and, subsequently amended, to recover moral damages, attorney's fees and costs. But this amendment was disallowed.

Defendant filed a motion to dismiss which, upon suggestion of the court, was converted into an answer on the part of defendant. After trial, the lower court rendered decision dismissing the complaint without pronouncement as to costs. Plaintiff brought this case on appeal before this Court on questions of law.

The issues posed in this appeal are:

"a. Were plaintiff-appellant's services with the government extended by the mere fact that the President ordered his suspension approximately 85 minutes before he reached the automatic and compulsory retirement age?

"b. Upon his exoneration from the administrative charges, is plaintiff necessarily entitled as a matter of right, to reimbursement for unpaid salaries corresponding to the period of suspension?

"c. Contingent upon an affirmative answer to the two preceding issues, what should be the extent of plaintiff's right to be reimbursed for damages suffered as a result of his suspension, if he were entitled, at all to such damages?"

Section 12 (c) of Commonwealth Act No. 186, as inserted by Section 8 of Republic Act 660, and as amended by Section 6 of Republic Act 728, provides as follows:

"(c) Retirement shall be automatic and compulsory at the age of sixty-five years, if he has completed fifteen years of service and if he has not been separated from the service during the last three years of service prior to retirement; otherwise he shall be allowed to continue in the service until he shall have completed the required length of service unless he is otherwise eligible for disability retirement. This clause shall not apply to members of the judiciary and constitutional officers whose tenure of office is guaranteed. Upon specific approval of the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, or the Chief Justice of the Supreme Court, as the case may be, an employee may be allowed to continue to serve in the Executive, Legislative, or Judicial branch of the Government after the age of sixty-five years if he possesses special qualifications and his services are needed. It shall be the duty of the employer concerned to notify each such employee under its direction of the date of his automatic separation from the service at least sixty days in advance thereof."

It is dear from the above that with regard to a government employee like appellant "retirement shall be automatic and compulsory at the age of sixty-five years" subject to the condition that he has completed 15 years of service and that he has not been separated therefrom during the last three years of service prior to retirement. It should be noted that the only circumstance which would extend the service of the employee upon reaching the retirement age is a specific approval by the President of his continuance in office if in his opinion "he possesses special qualifications and his services are needed." Since appellant has completed more than 15 years of service and has on April 5, 1954 reached 65 year's of age even if minutes before he was suspended by the President in view of certain charges filed against him, there is no question that under the law he is deemed to have been automatically and compulsorily retired on said date.

Appellant, however, contends that the intention of the President to continue him in office even after his suspension is reflected in at least three of his official acts which he enumerates as follows:

"Firstly, the President rushed the service of the Suspension Order to your plaintiff-appellant—it was served on a midnight, by personal courier, and barely 35 minutes before your plaintiff-appellant was to be automatically retired suspending him 'to continue until the termination of the investigation of the charges;' Secondly, the President, in filing plaintiff-appellant's temporarily vacated position, appointed another official in an acting and not permanent capacity; and Thirdly, the President had found it necessary to issue an order only to notify your plaintiff-appellant that he was exonerated from the administrative charges."

While the official acts above cited may prove an intention on the part of the President to extend the service of appellant because of his desire that his supervision over him continue for at least during the period necessary to complete the investigation of the charges preferred against him, such intention is of no moment in the light of the clear provision of the law to the effect that before he can be continued in office there must be a specific approval on the part of the President upon the ground that he possesses special qualifications and his services are needed. Here these conditions were not proven. On the contrary, the fact that he was suspended by the President is an indication that his continuance was merely intended for the purpose of carrying into effect the investigation of the charges preferred against him. Indeed, the only implication that can be drawn from such suspension was, not the desire of the President to continue appellant in office to do normal work, but his belief, rightly or wrongly, that unless he is thus suspended he will lose control over him for the purpose of such investigation.

The case of *Naric vs. Naric Workers' Union*, 98 Phil., 563; 52 Off. Gaz., (16) 6928, cited by appellant to support

his contention that suspension does not have the effect of his removal from the office but merely operates to temporarily prevent him from performing his functions until the determination of the administrative case against him, is not in point. While we agree with the ruling therein enunciated that when a suspended employee is exonerated he should be reinstated and his back salaries paid to him, the facts in the case at bar do not justify its application. In that case, the suspended employee did not actually cease to be in office by virtue of his automatic retirement unlike the present appellant who at the time of his suspension had reached the age of retirement. Even if exonerated he could not therefore be reinstated nor his salary reimbursed to him.

Appellant states that what the law requires as a condition precedent before the extension of the service of an employee who reaches retirement age could be made is the specific approval by the President and that the question of whether he possesses specific qualifications or that his services are needed are but mere guides to be considered by the President in determining when such approval should be given, and from this premise he concludes that once the approval has been given it is to be presumed that the conditions required for it are complied with. Stated in another way, it is contended that once the President has given his approval by specific act he is deemed to have considered the qualifications of the employee concerned. While this premise may be correct, the fact however is that the President has not given any specific approval to appellant's continuance in office. The so-called specific acts cited by appellant as indicating such approval do not meet the requirements of the law. Indeed, to say that specific approval may be inferred from the President's act of suspending appellant minutes before his retirement is to indulge in idle contradiction. Certainly, suspension is a negation of one's continuance in office. Rather, it indicates a contrary intention.

It therefore follows from the foregoing that, having been automatically retired from office upon completing his 65 years of age, appellant's subsequent exoneration from the administrative charges filed against him cannot entitle him to reimbursement to any salary corresponding to the period of his suspension. No other conclusion can be drawn in view of the imperative provisions of the law.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, and De Leon, JJ., concur.

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