

DR. RENATO S. MUÑEZ, MAYOR, MUNICIPALITY OF LA PAZ, AGUSAN DEL SUR, PETITIONER, VS. PABLITO L. JOMO, ROLANDO L. GALEON, RICKY L. MONDEJAR, ROMEO M. DURANGO, DANTE H. FRANCISCO, ...

G.R. NO. 173253. October 30, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Before the Court is this petition for certiorari with prayer for preliminary injunction assailing the Resolution[1] dated April 26, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 00611 dismissing the petition for review thereat filed by the petitioner for having being filed out of time and, in consequence, affirming the Order issued by the Civil Service Commission (CSC) ordering the reinstatement of the herein twenty-eight (28) private respondents to their previous positions.

The facts:

Dr. Renato S. Muñoz, petitioner herein, is the incumbent mayor of the Municipality of La Paz, Agusan del Sur while the private respondents are the displaced employees of the Municipality.

On October 30, 2001, the Sangguniang Bayan of La Paz enacted Ordinance No. 12, Series of 2001, abolishing the Municipality's two (2) Economic Enterprises, namely: the Motor Pool and the Road Construction and Maintenance and transferring all the properties and equipments thereof to the Municipal Engineering Office.

By virtue of said Ordinance, the petitioner, as the local chief executive, effected the abolition of the two aforementioned offices. As a result, the permanent employees assigned to the abolished agencies were dismissed from the service. Among them are the herein twenty-eight (28) private respondents.

In a letter dated April 22, 2002, the private respondents sought the intervention of the CSC Caraga Regional Office for their possible reinstatement, or, as a secondary option, the payment of their benefits as a result of their separation from the service. Upon conduct of a fact finding investigation, the CSC Regional Office declared the abolition of the two (2) agencies to have been made in bad faith and was merely resorted to as a disguise for removing the incumbent permanent employees thereof. Accordingly, in an Order[2] dated 21 January 2003, the CSC Regional Office adjudged the abolition void and ordered the Municipality of La Paz to reinstate the affected employees to their previous positions, or, if the same is not feasible, to a comparable or equivalent position with payment of back salaries and other benefits from the date of their removal until their actual reinstatement. Pertinently, the Order reads:

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A review of the record satisfies this Office that the justifications advanced for the abolition of complainants' offices (economy and efficiency) are but subterfuges resorted to for disguising an illegal removal of permanent employees, in violation of the security of tenure guaranteed by the 1987 Constitution and Republic Act 6656,

otherwise known as "An Act To Protect The Security of Tenure Of Civil Service Officers and Employees In the Implementation of Government Reorganization.

The claim of budgetary deficits effectuated through abolition of these departments are belied by the fact that out of thirty four (34) employees affected by the abolition, eleven of these separated permanent employees were hired as casuels in the year 2002 performing essentially the same functions as the one held by them prior to the abolition.

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For the months of September to December 2002, there were 104 Job Orders and Contracts of Services entered into which costs the local government P1,441,535.40. With the issuance of casual appointments for the year 2002, the local government paid approximately P2,442,735.90 representing the total amount of the daily wages of the casuels following the wage rates indicated in the Plantilla of Casual Appointments. Some of these casual employees and employees under contracts of services and job orders have replaced/assumed continuously the regular functions of the thirty four (34) former regular employees who were separated due to abolition of office.

Aside from the voluminous hiring of casuels, employees under job orders and contracts of services, this Office also observed that LGU-La Paz created a Private Secretary position assigned in the Office of the Vice Mayor pursuant to Ordinance No. 13-2001 with an annual salary of P126,420.00 as well as the creation of Municipal Human Resource Management Office (MHRMO) with one new item, namely: Municipal Government Assistant Department Head 1 (SG 22) with an annual salary of P231,012.00 as reflected under the agency's personnel Schedule.

The massive issuance of casual appointments, job orders, contracts of services as well as the creation of new positions in the local government of La Paz do not speak well of good faith (economy and efficiency) on the part of respondent Muñoz.

Whatever reasons for the abolition of office such as "budgetary deficit" or "municipal government suffering from limited financial resources" and even the allegation where said LGU was "compelled to settle the huge statutory and other financial obligations left by the previous administration" are difficult to comprehend. No further elucidation is required except for a simple truth of replacing the permanent employees having security of tenure with men and women of the chief executive's own choice whose tenure would be highly dependent upon his pleasure and discretion. Evidently, the abolition of office was in bad faith for it leads us to an inescapable conclusion that it was resorted to as a disguise for removing incumbent permanent employees. This is a clear transgression of complainants' security of tenure guaranteed to them by our fundamental law.

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In the instant case, respondent Muñoz justified the non-payment of separation benefits due to limited financial resources coupled with the alleged huge financial obligations left by the previous administration. If it were true, why the massive hiring of casuels? Why so many job orders and contracts of services? Why the increase in salaries of officers and employees for year 2002? Why the creation of new positions? And why the filling-up of vacant positions? We find no valid reasons why the local government could not pay the separations benefits within ninety (90) days reckoning from January 1, 2002, of these terminated employees who opted to be separated from the service.

WHEREFORE, ALL THING STUDIED, the abolition of positions is hereby declared VOID. Accordingly, the Municipal Government of La Paz, Agusan del Sur is ordered to REINSTATE the twenty-eight (28) separated employees to the positions they previously held prior to abolition. If no longer feasible, to a comparable or equivalent position with payment of back salaries and other benefits from the date of their removal from the service up to their actual reinstatement.

In the case of Pedro Tesado, Nelson Havana and Rizaldo Monte who were already paid their terminal pay, they

can still be reinstated provided they refund the equivalent amount for terminal pay.

In time, the petitioner mayor moved for a reconsideration. But in a subsequent Order[3] dated April 8, 2003, the same CSC Regional Office denied the motion. The mayor's appeal also suffered the same fate as it was likewise denied by the CSC proper in its Resolution[4] of August 26, 2005, viz:

WHEREFORE, the appeal of Mayor Renato S. Muñoz is hereby DISMISSED. Accordingly, the CSCRO No. III Order dated April 8, 2003 denying the motion for reconsideration of Mayor Muñoz from the CSCRO No. XIII Order dated January 21, 2003, which declared the abolition of positions in said agency as null and void and ordered the reinstatement of Pablito Jomo, et al., is AFFIRMED. The separated employees are reinstated without loss of seniority rights, leave credits, and full payment of back wages pursuant to Section 9, Republic Act No. 6656. Provided, that those employees who had received their terminal pay shall reimburse the same amount received or shall have the same deducted from their back wages. Provided further, that those employees who were hired as casual employees following their separation shall have the income derived during their illegal separation deducted from their back wages.

Ultimately, the petitioner mayor elevated the matter to the CA via a petition for review initiated by a motion for extension of time within which to file said petition, tentatively docketed in the CA as CA-G.R. SP No. 00611.

On October 28, 2005, the CA issued a resolution granting the mayor's motion for extension giving him fifteen (15) days from September 20, 2005 within which to file the intended petition for review, which extended period expired on October 15, 2005.

However, while the first motion for extension was still pending consideration, the mayor filed a second motion for extension on October 13, 2005.

Expectedly, pursuant to Section 4, Rule 43 of the Rules of Court, *infra*, the CA, in its resolution of February 8, 2006, resolved to 1) deny the second motion for extension of time; 2) note the petition for review received on November 8, 2005; and 3) dismiss the petition for being filed out of time, adding that it found no compelling reason "to grant the second motion for extension."

On March 13, 2006, the mayor moved for a reconsideration of the dismissal resolution but the same was denied by the CA in the herein challenged Resolution of April 26, 2006.[5]

Hence, the mayor's present recourse which poses the sole issue of whether the CA committed grave abuse of discretion in denying both his second motion for extension of time to file petition and his subsequent motion for reconsideration thereof.

We DISMISS.

Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties seeking to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[6]

The Court may deign to veer away from the general rule only if, in its assessment, the appeal on its face appears absolutely meritorious.[7] In the circumstances obtaining in this case, however, the occasion does not warrant the desired relaxation.

Section 4 of Rule 43 of the Rules of Court is explicit:

SEC. 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication.

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xxx the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Although the second motion for extension was filed within the first extended period, the reason proffered by the petitioner for seeking a second extension cannot, by any stretch of imagination, be seen as compelling.

The petitioner mayor would want the Court to turn a blind eye to his excuse that he did not want to take the risks of submitting illegible photocopies of the material portions of the records and thought it best to certify as true copy each and every page of the one thousand seven hundred and forty four (1,744) attachments to the petition. Of course, this was an unnecessary exaggeration, the consequence of which the petitioner had to bear.

The mayor would proffer, as an added cause for his delay, the fact that he was not able to sign the petition's verification and certification because he was then in Palawan on official business. Such flimsy excuse deserved no consideration at all.

Accordingly, we see no reason to discuss any further the substantial issues raised by the petitioner.

All told, we rule and so hold that the CA did not, in any way, abuse its discretion in rendering the herein challenged resolution dismissing the petition filed before it for having been filed out of time.

IN VIEW WHEREOF, this petition is DISMISSED.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Edgardo A. Camello with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario, concurring. Rollo, pp. 34-37.

[2] Id. at 92-103.

[3] Id. at 122-126.

[4] Id. at 245-254.

[5] Supra note 1.

[6] Manila Memorial Park Cemetery, Inc. v. CA, G.R. No. 137122, November 15, 2000, 344 SCRA 769.

[7] Air France Philippines v. The Honorable Judge Emilio L. Leachon (Regional Trial Court, Quezon City, Branch 224) and Lumen Policarpio, G.R. No. 134113, October 12, 2005, 472 SCRA 439.

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