

FILEMON LAVIÑA, PETITIONER-APPELLANT, VS. HON. FORTUNATO DE LEON, EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT ET AL., RESPONDENTS-APPELLEES.*G.R. No. 19796. January 31, 1967*

Ponente: DIZON, J.

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Appellant Filemon Laviña started working for the government as a junior stenographer on March 2, 1928. On December 11, 1946 he was appointed Executive Officer of the Surplus Property Commission with an annual salary of P9,000.00. On June 5, 1947, on account of the filing of criminal charges against him in connection with the disposal of surplus properties in Cebu City, he was suspended from office, and Assistant Executive Officer Benjamin Artificio was appointed to fill his position in an acting capacity.

On October 1, 1949, the President of the Philippines issued Executive Order No. 275 abolishing the Surplus Property Commission and transferring its functions to the Surplus Property Liquidating Committee. Upon its abolition, the Surplus Property Commission issued a circular to its employees advising them of the termination of their services. However, upon the organization of the Surplus Property Committee, one-third of the employees of the Surplus Property Commission were re-employed, Benjamin Artificio, however, not being amongst them. In his place the new office appointed Angel Llanes as Executive Officer with a salary of P12,000.00 per annum effective as of October 1, 1949.

On December 1, 1950, the Surplus Property Liquidating Committee was in turn abolished by Executive Order No. 377 and its functions and duties were taken over by the Board of Liquidators previously created under Executive Order No. 372.

After a protracted trial, Laviña was acquitted of the criminal charges filed against him on May 20, 1955. Thereafter, in a letter addressed to the Board of Liquidators, he asked to be reinstated to his former position and for the payment of his salary from the date of his suspension on June 5, 1947 up to the date of his reinstatement. Said board referred the matter to the Office of the President of the Philippines which, on August 6, 1955, approved payment of Laviña's salary in the amount of P21,000.00 covering the period from June 5, 1947 - the date of his suspension from office - up to September 30, 1949 - the date when the Surplus Property Commission was abolished.

Not satisfied with the decision above referred to, Laviña asked for a reconsideration thereof, and his efforts having failed he commenced an action for mandamus in the Court of First Instance of Rizal (Civil Case No. 4155) to compel the Hon. Fortunato de Leon, Executive Secretary, Office of the President, and other officers concerned, to "reinstatement" him to the position of Executive Officer and to pass in audit his salary corresponding from October 1, 1949 up to the time of his "reinstatement". After due trial, the lower court, on April 22, 1958, rendered judgment denying the petition for mandamus on the ground that the position of Executive Officer of the Surplus Property Commission formerly occupied by Laviña had been abolished by Executive Order No. 275 creating the

Office of the Surplus Property Liquidating Committee.

On June 21, 1958, after the reglamentary period for appeal had expired, Laviña filed a petition for relief under Rule 38 of the Rules of Court for leave to perfect his appeal alleging that, due to illness, his counsel was prevented from perfecting an appeal on time, attaching therewith the affi-davit of the attending physician. Despite appellees' oppo-sition, the lower court allowed Laviña to perfect his appeal and the same is now before Us.

This appeal depends entirely upon whether or not the Surplus Property Commission - hereinafter referred to as the Commission - created by Executive Order No. 27 of November 18, 1946 was abolished upon the creation of the Surplus Property Liquidating Committee - hereinafter referred to as the Committee - by virtue of Executive Order No. 275 of September 30, 1949. The former was organized "to accept x x x provide for the care, cus-tody and protection x x x to administer, sell or dispose" the vast surplus properties acquired by the Philippine Government from the United States Government after the Second World War, while the latter was organized not only to take over the powers, functions and duties of the Commission and to dispose of the remaining surplus properties of the Commission but was also charged with the duty of liquidating the assets of the Commission within the shortest possible time. It is to be noted, furthermore, that Executive Order No. 275 expressly abolished the Commission. Finally, by virtue of Executive Order No. 377 of December 1, 1950, the Committee was in turn abolished and its functions, powers and duties were transferred to the Board of Liquidators created by virtue of Executive Order No. 372 of November 24, 1950 for the purpose of liquidating the various corporations enumerated therein.

When Executive Order No. 27 of November 18, 1946, which created the Commission was issued, it abolished the body then known as Government Procurement Commission and provided for the transfer of the latter's personnel to the former. No similar provision was included in Executive Order No. 275 abolishing the Commission, nor in Executive Order No. 377 abolishing the Committee and transferring its functions and powers to the Board of Liquidators. It is to be noted, more-over, that upon the creation of the Committee, the abolished Commission issued a circular addressed to its employees ter-minating their services. As a matter of fact, however, a good number of its employees were re-employed by the new agency.

The foregoing clearly shows, in our opinion, that Executive Order No. 275 really intended to abolish and in fact did abolish the Commission, and this was the contempo-raneous interpretation of its effect by the officers of the Commission themselves as shown by the notice given to all the employees terminating their services.

WHEREFORE, the decision appealed from being in accordance with law, the same is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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