

RAMON A. GONZALES, PETITIONER AND APPELLANT, VS. THE PROVINCIAL AUDITOR OF ILOILO, RESPONDENT AND APPELLEE.

G.R. No. 20568. December 28, 1964

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

This is an appeal from the decision of the Court of First Instance of Iloilo dismissing the petition for mandamus in the above-entitled case.

The petitioner Ramon Gonzales was appointed Assistant on Complaints and Investigation, Office of the Governor, by Governor Jose C. Zulueta of Iloilo, effective July 1, 1961, with compensation at the rate of P250.00 a month. At the time of his appointment the petitioner was holding the Office of Municipal Councilor of Lambunao, Iloilo, and he had not resigned from said office to accept the appointment in the office of the Governor.

On July 31, 1961, the petitioner presented a voucher covering his salary as Assistant on Complaints and Investigation for July 1961 in the amount of P250.00 to the respondent Provincial Auditor of Iloilo for audit, but said respondent refused to pass in audit the said voucher for the reason that the petitioner continued to hold office as Councilor of Lambunao and so he may not be legally appointed Assistant in the Office of the Governor with compensation payable from the provincial funds. The respondent Provincial Auditor reasoned out that said appointment was in violation of the provisions of Sec. 2175 of the Revised Administrative Code as construed by the Secretary of Justice in his Opinion No. 121, Series of 1951.

On August 2, 1961 petitioner appealed to the Auditor General from the action of the respondent Provincial Auditor denying to pass in audit his salary voucher for the month of July 1961. On November 26, 1961, the Auditor General upheld the action of the respondent in denying to pass in audit the above-mentioned salary voucher of the petitioner.

Meanwhile the petitioner, in spite of the stand taken by the respondent regarding the non-audit of his salary voucher for July 1961 on the ground that his appointment to the office of Assistant on Complaints and Investigation was illegal, continued to serve as such Assistant until December 31, 1961, when he resigned. Upon his resignation, the petitioner prepared a salary voucher for P1,500.00 covering his salary for six months from July 1, 1961 to December 31, 1961 and presented to the respondent the said voucher but the respondent verbally informed the petitioner that he (respondent) would deny audit of the voucher for the same reason that he denied audit of the salary voucher for P250.00 covering the salary for July 1961.

On August 11, 1981, while acting as such Assistant in the Office of the Governor, the petitioner obtained a cash advance of P200.00 from the office of the Provincial Treasurer for travelling expenses within the province in connection with his duties. When the petitioner sought the liquidation of the said cash advance by submitting a voucher for per clients the respondent Provincial Auditor, on June 5, 1962, again refused to pass said voucher in audit on the same ground that he refused to pass in audit the salary vouchers aforementioned. Because of the

refusal by the respondent Provincial Auditor to pass in audit the voucher covering the per diems and settlement of the cash advance, the Provincial Treasurer also refused to pay the claim of the petitioner for per diems.

Instead of appealing to the office of the President of the Philippines from the decision of the Auditor General upholding the action of the respondent Provincial Auditor denying to pass in audit his salary voucher for July 1961, the petitioner filed a petition for mandamus in the Court of First Instance of Iloilo on August 31, 1962 against the respondent herein. In his petition the petitioner prayed that the respondent be ordered to pass in audit the vouchers of said petitioner covering his salary for P1,500.00 and per diems to liquidate the cash advance of P200.00. The petitioner alleged that the respondent Provincial Auditor in refusing to pass in audit the said vouchers for salaries and per diems, although those vouchers had been approved by the Provincial Governor under the available appropriations, was in reality unlawfully neglecting the performance of an act which the law specifically enjoins as a duty resulting from his office. Petitioner further alleged that he had no other speedy and adequate remedy in the ordinary course of law except the petition for mandamus which he had filed in the present case.

The provincial Fiscal of Iloilo, in representation of the respondent Provincial Auditor, filed an answer, and by way of affirmative and special defenses alleged, among others, that the petitioner had not exhausted all administrative remedies available under the law before filing his petition for mandamus, hence the petition was premature and could not legally be entertained by the court. The provincial Fiscal further alleged that petitioner being a duly elected municipal councilor of Lambunao, Iloilo, and, acting as such from July 1, 1961 to December 31, 1961, he could not at the same time legally assume the office of Assistant on Complaints and Investigation in the Office of the Provincial Governor of Iloilo without violating Section 2175 of the Revised Administrative Code, and consequently the petitioner was not entitled to collect his salary as such Assistant in the Office of the Governor.

After the respondent Provincial Auditor had filed his answer the petitioner moved for judgment on the pleadings. Over the objection of counsel for the respondent, the lower court granted the petitioner's motion for judgment on the pleadings.

On October 25, 1962 the Court of First Instance of Iloilo, in a decision handed down by Judge Pantaleon A. Pelayo, denied the petition for mandamus. The pertinent portion of the decision reads as follows:

"Section 653 of the Revised Administrative Code of the Philippines reads:

'Any person aggrieved by the action or by any decision of a provincial or city auditor in the settlement of an account or claim may within one year appeal to the Auditor General and any person similarly aggrieved by the action or decision of the Auditor General may likewise within one year appeal to the President of the Philippines.

'From a decision adversely affecting the interest of the Government the appeal may be taken by the proper Head of Department, or in case of provinces and municipalities, or other form of local government, by the head of the office or branch of the Government immediately concerned.'

"Said legal provisions was modified by Commonwealth Act No. 324, approved, June 18, 1938. According to section 2 thereof the party aggrieved by the final decision of the Auditor General in the settlement of any account or claim may, within thirty days from receipt of the decision, take an appeal in writing to the President of the Philippines or to the Supreme Court of the Philippines if the appellant is a private person or entity. According to Section 656 of the said Revised Administrative Code the action of the President shall be final.

"In a recent case decided by the Supreme Court, tribunal said:

'Appellant, by his petition for mandamus, is, in effect, appealing from the decision of the Auditor General

denying his claim for gratuity. Such appeal should have been made to this Court within 30 days from the notice of the decision. As the law now stands, the decision of the Auditor General in cases affecting an executive department, bureau, or office of the Government may be appealed directly to the President whose action shall be final; while those where the aggrieved party is a private person or entity are appealable to the Supreme Court, '(Com. Art No. 327; Rule 45, Rules of Court; Radiowest vs. Agregado 86 Phil., 429, 47 Off. Gaz., Supp. December, 1951; Stiver vs. Dizon, 76 Phil. 725; Abad Santos vs. Auditor General, 79 Phil. 176; Rosario vs. Auditor General, G. R. No. L-11817, April 30, 1958.)' (See Gaudencio Lacson vs. Auditor General, et al., April 29, 1960, Off. Gaz. Vol. 58, No. 14, pp. 2916-2917).

"It is evident that the action is unwarranted. It does not come within the purview or operation of the law. In other words, the facts described in the petition do not constitute & cause of action. The Court is not authorized to grant the relief therein sought for. Petitioner has knocked at the wrong door. What he is in search of cannot be found here, but elsewhere. So, the action is dismissed with the costs against him."

From the decision of the Court of First Instance of Iloilo the petitioner brought the present appeal to this Court.

In his appeal, the petitioner makes the following assignment of errors:

- That the lower court erred in holding that the petitioner has no cause of action for failure to appeal to the Supreme Court.
- That the lower court erred in not declaring that the Respondent Provincial Auditor has no authority to declare petitioner's appointment as Governor's assistant as illegal and void;
- That assuming that said respondent has such authority the lower court erred in not declaring that petitioner's appointment as Governor's assistant is valid and legal;
- That assuming that said appointment is invalid, the lower court erred in not declaring that petitioner is a de facto officer under a defective appointment, hence entitled to compensation.

The matter to be resolved in this appeal is whether or not the lower court had correctly dismissed the petition for mandamus.

Regarding the first assignment of error, the decision of the lower court does not suggest at all that the petition was dismissed because the petitioner had not appealed to the Supreme Court from the decision of the Auditor General. The lower court simply cited the law and a decision which have bearing on the rule regarding the exhaustion of other remedies before a resort to a court action such as the one taken by the petitioner. What the decision pointed out was that the petitioner should not have gone to court on a petition for mandamus because he had other recourse and adequate remedy under the law.

Section 2 and 3 of Article XI of the Constitution provide:

"SEC. 2. The Auditor General shall examine . . . ; and audit, in accordance with law and administrative regulations, all expenditures of fund or property pertaining to or held in trust by the Government or the provinces and municipalities thereof"

"SEC. 3. The decisions of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President whose action shall be final. When the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law. . . ."

Section 2 of Commonwealth Act No. 327 provides:

"SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or

claim may, within thirty days from the receipt of the decision, take appeal in writing:

"(a) x x x

(b) To the President of the Philippines;

(c) To the Supreme Court of the Philippines if the appellant is a private person or entity."

The petitioner was a person in the government service when he claimed for payment of his salary. When the respondent Provincial Auditor refused to pass in audit his salary voucher, the petitioner appealed to the Auditor General. The matter of passing in audit a salary voucher is not a ministerial function. The Auditor General exercises a discretion or a quasi-judicial power when he acts on whether to pass a salary voucher in audit or not. Certainly the Auditor General has the power to look into the question of whether the person claiming salary payment is entitled to the salary or not. The Auditor General may err. The decision of the Auditor General is appealable to the President of the Philippines. When the Auditor General sustained the action of the respondent Provincial Auditor of Iloilo in refusing to pass in audit the salary voucher of the petitioner, what he should have done, being then a government employee, was to appeal to the President from the decision of the Auditor General. This the petitioner did not do. Instead he filed the present action for mandamus in the Court of First Instance of Iloilo. The step taken by the petitioner was not in accordance with the procedure provided by law. The petitioner had still a recourse open to him, and that was to appeal to the President of the Philippines. And the Constitution and the law empower the President to grant relief to him.

The rule, that no recourse to court can be had until all administrative remedies had been exhausted and that special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief, is squarely applicable to the present case (*Bartolome vs. Auditor General*, 94 Phil. 718; *Primo Panti vs. Provincial Board* etc. 106 Phil. 1093; and *Lazaro Booc vs. Sergio Osmeña, Jr. etc.*, G. R. No. L-14810, May 31, 1961).

In the case of *Perfecta dela Cruz, vs. Josefa de la Paz*, G. R. No. L-17440, December 26, 1963, We held:

"When an adequate remedy may be had within the Executive Department of the Government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a co-equal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. This has been a consistent ruling in a chain of cases decided by us. (See *Jao Igco vs. Shuster*, 10 Phil. 448; *Lamb vs. Phipps*, 22 Phil., 456; *Miguel vs. Reyes*, 93 Phil., 542; *Arnedo vs. Aldanese*, 63 Phil., 768; *Tuan Kay vs. Import Control Commission*, 91 Phil., 143; *Veloso vs. Board of Accountancy*, G. R. No. L-5760, April 20, 1953; *Lubugan, et al. vs. Castrillo and Malinay*, G. R. No. L-10521, May 29, 1957.)"

The decision of the lower court dismissing the petition for mandamus is in accordance with the law and the applicable decisions of this Court. After declaring that the decision of the lower court is correct, and We have thereby disposed of the first assignment of error, We do not consider it necessary to pass upon the other questions raised by the petitioner in the other errors that he had assigned in this appeal.

WHEREFORE, the decision appealed from is affirmed, with costs against the petitioner-appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, and Bengzon, J. P., JJ., concur.

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