

CESAR GUILLERGAN, ET AL., PETITIONERS AND APPELLEES, VS. RODOLFO GANZON, AS MAYOR OF THE CITY OF ILOILO, MUNICIPAL BOARD OF ILOILO CITY, CITY TREASURER AND THE CITY OF ILOILO, R...

G.R. No. 20818. May 25, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, by respondents, from a decision of the Court of First Instance of Iloilo, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATION, writ of mandamus is hereby granted against the respondents who are hereby ordered to restore the items corresponding to the salaries of the petitioners in the budget; to reinstate the petitioners to their former positions, and to pay their salaries during their separation from service, with costs against the respondents."

Petitioners herein are laborers or employees in the unclassified service, assigned as market-sweepers of the City of Iloilo, in which capacity they have been working for some time, ranging from nine (9) to twenty-five (25) years. On July 12, 1955, petitioners herein, together with 13 other laborers and/or employees of Iloilo City as market sweepers, slaughterhouse laborers and market cleaning capataces, commenced civil case No. 3764 of the Court of First Instance of Iloilo against the Mayor, the Treasurer and the Veterinarian of Iloilo City, to compel these officers to reinstate said petitioners to their aforementioned positions, from which they had been allegedly separated or dismissed illegally. In their answer, the respondents in said case alleged that respondent Mayor had the right to remove or separate the petitioners therein from the service because they were not civil service eligibles and were paid on a daily basis. In due course, judgment was, on March 15, 1956, rendered in said case, which is already final and executory, against the respondents and in favor of the petitioners therein—excluding three of them, as to whom the case was dismissed at their own request, but including the eleven (11) petitioners herein—who were declared permanent employees and/or laborers of Iloilo City and ordered reinstated to their respective positions as such. However, their items were not included in the budget approved by the Municipal Board of Iloilo City for the fiscal year 1960-1961. Petitioners asked the Secretary of Finance to declare said abolition of their positions inoperative, but the request was denied by said officer upon the ground that the issue could be determined only by courts of justice. Hence, petitioners instituted the present action for mandamus against the city mayor, the municipal board, the city treasurer and the City of Iloilo, to compel said respondents to restore the aforementioned items in the city budget, to reinstate petitioners to their former positions, and to pay their salaries during their separation from the service, with costs.

In their answer, respondents alleged that the abolition of said items had been decreed for reasons of economy, to balance the budget and to meet the free elementary education program of Iloilo City, apart from the alleged inefficiency of the petitioners. Respondents, likewise, averred in their answer that the city was contemplating to

place the cleaning of the markets under contract with private individuals.

After appropriate proceedings, the lower court rendered the decision appealed from, finding against the foregoing allegations of fact of respondents herein; that said allegations "are devices conceived in order to smoke screen the real cause of the elimination of the items of the petitioners in the budget for the year 1900-1961, which J3 political exigency;" that said elimination of petitioners' items was "politically inspired, so that the positions they vacated could be filled up by the followers of the respondents;" and that, in fact, after the abolition of said items, "new men or laborers were placed by the respondents to take the places vacated by the petitioners;" and, consequently, holding said abolition of items illegal and void.

The appeal taken by respondents herein raises only one question, namely, whether or not the lower court erred in holding the City of Iloilo jointly liable with the other respondents for the back salaries of petitioners herein. Respondents-appellants maintain the negative upon the ground that municipal corporations enjoy the same immunity as the state in the administration of strictly governmental functions, unless expressly made liable by statute, and that pursuant to Section 4 of the Charter of Iloilo City (Commonwealth Act No. 158, as amended) :

"* * * The City shall not be liable for damages or injuries to persons or property arising from the failure of the Municipal Board, or any City Officer, to enforce the provisions of this Charter, or any other law or ordinance, or from negligence on their part while carrying out or enforcing said provisions".

Respondents' pretense is untenable. To begin with, the Charter of Iloilo City (Sec. 3 of Commonwealth Act No. 158), expressly provides that the City of Iloilo may "sue and be sued". Secondly, the operation of a market, in the cleaning of which petitioners herein are engaged, is not strictly a governmental function.[1] Thirdly, we have already decided in a number of cases that municipal corporations may be held liable for back pay or wages of employees or laborers illegally separated from the service, including those involving primarily governmental functions, such as those of policemen.[2]

Wherefore, the decision appealed from is hereby affirmed, with costs against respondents-appellant. It is so ordered.

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

Judgment affirmed.

[1] Esteban vs. City of Cabanatuan, 108 Phil., 374 (May 30, 1960). See, also, 43 C.J. 1374; 63 C.J.S. 324; 38 Am. Jur. 305; City of Nashville vs. Fox, 6 Tenn. App. 653; Savannah vs. Collens, 38 Ga. 334, 95 Am. D.

[2] Mission vs. Del Rosario, 94 Phil., 483; 50 Off. Gaz., 1571; Abella vs. Rodriguez, 95 Phil., 289; 50 Off. Gaz., 3039; Uy vs. Rodriguez, 95 Phil., 493; 50 Off. Gaz. 3574; People vs. Bautista, 96 Phil., 43; 50 Off. Gaz., 5286; Faunillan vs. Del Rosario, 99 Phil., 758; 50 Off. Gaz., 5815; Cacho vs. Osmeña, 103 Phil., 837; Briones vs. Osmeña, 104 Phil., 588; Noromor vs. The Municipality of Oras, L-18637, February 23, 1963; Cuñado vs. Camus, and Vulecera vs. Ganms, L-16782-83, May 30, 1963; Urgelio vs. Osmeña, L-14908, February 28, 1964; Tanala vs. Legaspi, L-22537, March 31, 1965; and Gabutas vs. Castellanes, L-17323, June 23, 1965.

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