

JOSE ABANILLA, DIONISIO TUVILLA, FRANCISCO VIGO, HERNAN, ERNESTO, BERNADETTE, ELNA, JOSEFINE AND CESAR, ALL SURNAMED CLAVICILLAS, REPRESENTED BY CARMELINA G. VDA. DE CLAVECILLAS...

G.R. No. 22271. July 26, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Appeal "on wholly question of law"[4] from a judgment of the Court of First Instance of Iloilo, as follows:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered declaring the abolition of the positions of the original petitioners by Ordinance Nos. 27 and 29, Series of 1960 illegal; and ordering the respondents:

To reinstate immediately petitioners Jose Abanilla, Dionisio Tuvilla, Francisco Vigo and Gregorio de Jesus to their former positions at the rate of salaries they were then receiving;

To pay the back salaries of petitioners Abanilla, Tuvilla, Vigo and de Jesus during the period of their illegal separation, and of deceased Francisco Clavecillas[5] and Silvino Santander up to the time of their deaths to their legal heirs;

To give and/or pay all the rights benefits and such other sums of money which the petitioners and the legal heirs of deceased Francisco Clavecillas and Silvino Santander may be entitled to under the law;

To appropriate such sums of money as may be necessary for the purposes above-mentioned; and

To pay the costs."

Following are the facts lifted from the decision below, viz:

"From the evidence, it appears that the six original petitioners were among the ten (10) employees whose positions were abolished from the Garage Fund Annual Budget by Ordinance No. 27, Series of 1960, enacted March 31, 1960, as amended by Ordinance No. 29, Series of 1960, enacted April 28, 1960, which became effective April 30, 1960. Four of these abolished items were later transferred with the incumbents to General Funds, one to the Office of the City Mayor, one to the Office of the City Treasurer, one to the Office of the City Auditor and one to the Office of the City Engineer, so that in effect only the six (6) original petitioners were dropped from the service. According to the Stipulation of Facts (Record, pp. 98-101), the petitioners at the time of the abolition of their positions were holding permanent appointments either by the Secretary or Undersecretary of Public Works and Communications as drivers (except one as Helper-Sprinkler Truck) in the Bureau of Public Works or Public Highways (Iloilo City Engineering District) in the unclassified service and were members of the Government Insurance Service (Exhs. G, H, I, J, K, & L—Appointments and Exhs. R, R-1, S, S-1, I, I-1, U, U-1, V, V-1,-Insurance). According to the appointments, Jose Abanilla was appointed to Item 63, 3, City General Fund Plantilla, 1954-1955; Dionisio Tuvilla to Item 21, Page 2, City General Fund Plantilla of Personnel, 1956-1957; Francisco Clavecillas to Item 22, Page 2, City General Fund Plantilla of Personnel, 1956-1957; Gregorio de Jesus to Item 83-346, Page 1, Consolidated National Plantilla of Floating

Personnel, 1953-1954; Francisco Vigo to Item 25, Page 2, 1958-1959 City General Fund Plantilla; and Silvino Santander to Item 15, Page 1, City General Fund Plantilla for Personnel, 1956-1957. It further appears in the Agreed Stipulation of Facts (Record, p. 98) that Petitioner Clavecillas was senior as to length of service to six (6) employees whose items were not abolished; Santander, Tuvilla and Vigo, to five (5) whose positions were not abolished; and Abanilla and de Jesus, to two (2) whose positions were not abolished. It further appears that four of the ten positions abolished from the Garage Fund Budget for the fiscal year 1959-60 by Ordinance No. 27 (Exh. C) as amended by Ordinance No. 29 (Exh. D) were transferred to the General Fund Annual Budget of the year 1960-61, together with the incumbents; one to the Office of the Mayor, one to the Office of the Treasurer, one to the Office of the City Auditor, and the fourth to the Office of the City Engineer. Two months after the abolition of the said positions from the Garage Fund Budget on June 30, 1960, the City Council of Iloilo City passed Ordinance No. 43, Series of 1963, approving the 1960-61 General Fund Annual Budget (Exh. A) and according to the corresponding Budget Analysis (Exh. B), ten new positions of drivers were created, two truck drivers in the Office of the Mayor, Item 60, p. 168 of the Record, and 8 civilian drivers in the Police Department, Item 30, p. 61 in the Record. The six (6) original petitioners were not reappointed to the new positions of drivers. According to the notices of removal (Exhs. L, M, N, P, Q,) the items of the petitioners were eliminated from the Garage Fund Annual Budget for the fiscal year 1959-60 for purposes of economy'. "[6]

The crux of the case is: Were the original petitioners separated from the service in bad faith?

In our approach to the problem, we first direct our attention to the notices of removal. There, original petitioners' services were considered terminated as of April 1st 1960 because their items have "been eliminated" from the budget "for purposes of economy". [7] But let us have a look at Ordinance No. 27 enacted on March 31, 1960, or one day before the effectivity of original petitioners' separation. That ordinance emphasizes the existence of "balance of an estimated revenue available for appropriations" in the sum of P12,980.00. We are hardpressed to understand that that estimated surplus should have totally been wiped out and so soon. The trial judge correctly remarked that this amount "could have covered the salaries of the abolished positions". [8] Lack of funds in the garage service, whatever be its merits, is not tendered by the record. And, if really there were no funds, it is strange that after the six positions of the original petitioners were abolished, ten positions of drivers were thereafter promptly created by the City: 2 for the office of the Mayor and 8 for the police department.

In reality, the economy reason is—in the language of the lower court—"contrary to the truth". For, according to the fiscal year 1961 Budget Analysis, "there was an increase in the city revenues in the sum of more than P900,000 and that the 1960-61 Budget created 142 positions with a total salary of P251,375 and also increased the salaries of 647 employees by P115,294.50. (Record, pp. 157, 161-165 & 168, 169)". [9]

Even on the assumption that the garage (motor pool) was operating at a loss, as respondents claim, that circumstance would not attenuate respondents' responsibility. We should not overlook the fact that the garage system was established for the city's service and not for profit. For, a city government office shares none of the basic purposes of a profit-making private enterprise. And if city service is essential, then profit is immaterial. The garage is a part and parcel of the city's governmental set-up.

As if the respondent City Engineer has run dry of explanations for the abolition of original petitioners' positions, he hit upon the idea that such abolition was made necessary—for the maintenance of the sinking fund for the replacement of equipment. But this fund was, according to the court below, "disestablished by Executive Order 31, dated May 5, 1954" and "up to the present no reserve or sinking fund for the replacement of equipment of the Garage System of Iloilo City has ever been set aside". [10]

When one underlying reason quarrels with another, it is not far-fetched to say that both quarrel with the truth. And the truth is that abolition constitutes but a transparent device conceived to unseat incumbent petitioners. For they

were left out in the cold: the five drivers, when appointments to the ten new similar positions were made; and the position of Jose Abanilla (helper-sprinkler truck), who was in the service for eleven years, was not even recreated. The original petitioners were eased out of their jobs without cause. They were discriminated against, their security of tenure ignored. Other employees similarly employed but with less number of years of service were retained, their positions preserved. Original petitioners did not as much as rate a treatment equal to the four favored drivers whose positions were also abolished but who were given sanctuary in other offices in the same city government.

All of these funnel down to one conclusion—what were abolished were the petitioning employees, not their positions. Their removal was in bad faith. Courts are duty bound to honor the constitutionally protected security of tenure^[11] in observance, not in breach. We declare that restoration is proper. So is the payment of back salaries.^[12]

For the reasons given, we vote to affirm the appealed judgment. Costs against respondents. So ordered.

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

Judgment affirmed.

[1] Hernan, Ernesto, Bernadette, Elna, Josefine and Cesar all surnamed Clavecillas, are petitioners in substitution of Francisco Clavecillas, of petitioners who died on May 18, 1962. Record, pp. 81-82, 87-94, 99.

[2] In substitution of Silvino Santander, another petitioner who died on October 30, 1960. Id.

[3] Respondent Reinerio Ticao is in substitution of former Mayor Rodolfo Ganzon. Ibid.

[4] Notice of Appeal, Record, p. 326.

[5] Also known as Francisco Clavicillas. See original and amended petitions, Record, pp. 1, 87. His name, as written in his appointment, is Francisco Clavesillas; and in his policy of insurance with the GSIS, Francisco G. Clavesillas. Record, pp. 150, 173.

[6] Decision, Record, pp. 316-319.

[7] Exhibits L, M, N, O, P and Q, stipulation of Facts No. 11. Records, pp. 63, 154-159

[8] Decision, Record, p. 321.

[9] Decision, Record, p. 319.

[10] Decision, Record, p. 321.

[11] Constitution, Article XII, Section 4.

[12] Briones, etc., et al. vs. Osmeña etc., et al., 55 Off. Gaz. No. 11, pp. 1920-1923, citing Gacho, et al., vs. Osmeña, etc. et al., 103 Phil., 837 [55 Off. Gaz., No. 48, p. 10079]; Gonzales vs. Osmeña; L-15901, December 30, 1961, citing Mangubat vs. Osmeña, L-12837, April 30, 1959; Urgelio, et al., vs. Osmeña, et al. L-14908, October 31, 1963.

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