

**ARTURO H. TROCIO, PETITIONER-APPELLANT, VS. ABELARDO SUBIDO, JORGE LABAYO, JOSE QUIROLGICO, ANTONIO LUSPO, AND GREGORIO BALANZA, RESPONDENTS-APPELLEES.***G.R. No. 23363. May 31, 1967*

Ponente: BENGZON, J.P., J.

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Sometime in 1961, petitioner-appellant Arturo Trocio, as Municipal Treasurer of Mambajao, Camiguin, Misamis Oriental, was administratively charged for violation of Sec. 14 of the 1954 Revised Manual of Instructions to Treasurers and Sec. 614 of the Revised Administrative Code. Upon finding that Trocio had cash items consisting of National and Provincial payrolls amounting to P8,993.99 paid by him without the express approval of the Provincial Treasurer in violation of the provisions above-stated, the Civil Service Commissioner, on June 21, 1961, found him guilty as charged in a decision the dispositive portion of which read:

"x x x Wherefore, he is hereby fined his fifteen (15) days pay, reprimanded and warned that commission of another offense will be dealt with more severely. In the interest of the service, he should likewise be transferred without demotion in rank or salary such action not being considered disciplinary in character."

x x x x

Trocio moved for reconsideration. This was denied by resolution of the Commissioner, dated May 27, 1964, which stated further that "the aforementioned decision be executed immediately, it appearing from the records that the respondent-petitioner has not yet paid the fine imposed upon him and that he has not also been transferred."

Upon indorsement to him of the foregoing resolution by the Undersecretary of Finance for compliance, the Provincial Treasurer of Misamis Oriental issued a directive on June 3, 1964 reprimanding and warning Trocio, ordering him to effect immediate payment of the fine imposed and detailing him for assignment in the office of the Provincial Treasurer in Cagayan de Oro City, without demotion in rank or reduction in salary. On the same date, the Provincial Treasurer designated the assistant Municipal Treasurer, Gregorio Balanza, as officer in charge of the Municipal Treasurer's office of Mambajao in place of petitioner-appellant.

Trocio refused to obey this directive, insisting that the decision of the Commissioner was illegal. On June 15, 1964, he appealed to the Civil Service Board of Appeals claiming that his conviction was without due process of law and that, given the opportunity, he can justify all his acts. Trocio also questioned the immediate execution of the decision on the ground that it has not yet become final and executory since under Sec. 36 of the Civil Service Act of 1959 (Republic Act 2260) he still had 30 days within which to appeal to the Civil Service Board of Appeals and on the further ground that his transfer was unlawful since he did not consent there-to.

On June 20, 1964, Trocio went to the Court of First Instance of Misamis Oriental with a petition for prohibition with preliminary injunction to prevent the immediate execution of the questioned decision. The court issued the

preliminary writ of injunction prayed for. But subsequently, the same court, acting upon an urgent motion to dismiss filed by respondents-appellees, dismissed the petition and dissolved the preliminary injunction, upholding the Commissioner's right to execute his decision pending appeal to the Civil Service Board of Appeals, and Trocio's recall to the Provincial Treasurer's office.

Upon denial of his motion for reconsideration, Trocio appealed to this Court raising questions purely of law. On August 6, 1964, petitioner-appellant filed here a motion for issuance of preliminary injunction to put him in possession of the office. This We denied.

At issue is the authority of the Commissioner of Civil Service to enforce his decision pending its appeal to the Civil Service Board of Appeals. The Revised Civil Service Rules provides<sup>[1]</sup> as follows:

"The Commissioner shall transmit to the head of Department concerned his decision on the case within six months from date of receipt of the complete record of the case and the head of Department shall, within 10 days from receipt thereof, serve the respondent a copy of the decision. The Commissioner, if public interest so warrants, may order his decision executed pending appeal to the Civil Service Board of Appeals."  
(Underscoring supplied)

Petitioner-appellant does not seriously question the power, in general, of the Commissioner to execute his decision pending appeal. What he assails, however, is the correctness or propriety of the latter's action, submitting that public interest - meaning the interest of the Republic of the Philippines, and not that of Mambajao, Camiguin subprovince - does not call for execution of the decision pending appeal in his particular case.

The submission is untenable. Petitioner-appellant perhaps would be correct if the Rules used the words "national interest". But even applying petitioner's concept of "public interest", the result will be the same. Since as municipal treasurer, he undoubtedly handles national as well as provincial and municipal funds, the interest of the Republic, or the "community at large" is affected. And it is primarily for the Commissioner to determine when public interest warrants the execution, pending appeal, of his decisions since that is not ministerial but discretionary on his part. Petitioner-appellant then has the burden to show clearly that the action undertaken by the Commissioner amounted to grave abuse of discretion. None having been shown, the dismissal of the petition by the court *quo* cannot be validly assailed as erroneous.

Petitioner-appellant relies upon *Cabigao v. Del Rosario*, L-18370, Oct. 31, 1962, for the proposition that Commissioner may execute his decision pending appeal only if special reasons require it. This is untenable. Sec. 28 of Rule XVIII of the Revised Civil Service Rules does not require the presence of special reasons. Moreover, *Cabigao v. Del Rosario* is not authority for the proposition maintained by petitioner. The ratio decidendi there was that although the decision of the Commissioner adverse to the government employee under investigation is appealable to the Civil Service Board of Appeals, the former has discretion to enforce it and make it effective pending appeal, to protect public interest. The presence or absence of special reasons therefor was not at issue, and hence anything said on the point must be regarded as mere obiter.

Petitioner-appellant would also advance as an issue here the correctness and legality of the questioned decision of the Civil Service Commissioner. But such question - which goes to the merits of the case - is not a matter that should be passed upon here. It should be resolved in the Civil Service Board of Appeals where the entire administrative decision is being questioned. The only question here is whether the decision of the Commissioner can be legally executed pending appeal. And under the facts and circumstances above described, We hold that it can.

WHEREFORE, the order of dismissal appealed from is hereby affirmed with costs against petitioner-appellant.

**SO ORDERED.**

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

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[1] Rule XVIII, D., Sec. 28.

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