

ROMAN D. ABELLERA, PLAINTIFF-APPELLEE & APPELLANT VS. THE CITY OF BAGUIO, ET AL. DEFENDANTS-APPELLANTS & APPELLEE.*G.R. No. 23957. March 18, 1967*

Ponente: REYES, J. B. L., J.

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Direct appeal on points of law from a decision of the Court of First Instance of Baguio, in its Case No. 1346.

For having paid, out of city funds, various treasury warrants and/or checks which turned out to have been forged, causing loss to the city in the total amount of P8,750.48, Roman D. Abellera, cashier in the office of the City Treasurer of Baguio, was charged administratively on January 18, 1960 for "Dishonesty and Gross Negligence in the Performance of Official Duties" (Case No. R-22111). After the lapse of the period of preventive suspension, he was automatically reinstated to the service on May 24, 1960.

On June 6, 1961, the Commissioner of Civil Service found him guilty as charged and considered said respondent "resigned effective the date following his last day of duty with prejudice to reinstatement in positions Involving money and/or property responsibility". In view of the foregoing decision, Abellera was dismissed on July 10, 1961, and the position of cashier was filled in by one Francisco Rillera. In the meantime, upon denial by the Commissioner of his motion for new trial, Abellera appealed to the Civil Service Board of Appeals.

On January 25, 1963, the Civil Service Board of Appeals modified the ruling of the Commissioner of Civil Service by reducing the penalty imposed on the employee to two months suspension, without pay. Other-wise, the decision of the Commissioner was affirmed in all other respects. After some delay attending the exchange of communication between the City Treasurer of Baguio and the Civil Service Commissioner, Abellera was finally allowed to report for work on November 11, 1963.

On January 17, 1963, however, alleging that he has not been reinstated to his former position of cashier, but was only required to do work other than that of a cashier, and that he has not been paid any salary, including the back salaries due him from July 10, 1961, Abellera filed an action for mandamus in the Court of First Instance of Baguio against the City of Baguio, the City Council, the City Auditor, and the City Treasurer, the latter being sued both in his official as well as his personal capacities; seeking for his re-instatement to the position of city cashier with back salaries from July 10, 1961; for moral damages in the sum of P5,000.00; exemplary damages for P5,000.00; attorneys' fees in the sum of P1,500.00 and 20% of the recover-able salaries, plus costs of the suit.

In their answer, respondents contended that petitioner was not re-instated as cashier due to the cancellation of his bond; that said cancellation of bond was recommended by the City Treasurer following the ruling in the administrative case, finding petitioner negligent in his duties. It was also alleged that petitioner was offered the position of Special Deputy^[1] with compensation at P3, 960.00 per annum. Respondent City Treasurer further claimed that in refusing to reinstate petitioner to the position of cashier, he had in mind only the best interest of the government. The parties thereafter submitted the case for judgment on the pleadings.

In its decision of June 8, 1964, the lower court declared that the action of the City Treasurer in not giving petitioner the work of a cashier was justified by the decision of the Civil Service Board of Appeals, reducing merely the penalty by providing a 2 months suspension, but otherwise affirming the decision of the Commissioner of Civil Service in all other respects. But the respondents were ordered to pay Abellera's salary from the date of his suspension on July 10, 1961 until November 10, 1963, deducting therefrom the 2 months pay corresponding to the penalty imposed by the Civil Service Board of Appeals. Respondents were also directed to reinstate him to a position in the service of the city government with salary at P330.00 a month, but which will not involve the custody of funds and/or property. The court did not award any damages, because no bad faith can be attributed to anyone, including the City Treasurer, and also because municipal corporations cannot be held civilly liable for the misfeasance or malfeasance of any of its officers or employees. Both parties appealed to this Court.

Appellants City of Baguio and its officials assail the correctness of the award of back salaries to petitioner from July 10, 1961 to November 10, 1963. It is claimed that since petitioner was found guilty of negligence by the Civil Service Board of Appeals although the penalty originally imposed by the Commissioner of Civil Service was reduced to only 2 months suspension, his (Abellera's) suspension from the service cannot be considered unjustified to entitle him to payment of the salaries during the period in question. It is also contended that such payment of back salaries is discretionary in the proper department head, in this case, the Secretary of Finance. On the other hand, petitioner as appellant claims that the lower court erred in not ordering the respondents, particularly the City Treasurer, to pay him damages and in not ordering his reinstatement to the position of cashier in the office of the City Treasurer of Baguio.

The rule on payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated, is already settled in this jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, Rep. Act 2260), but also when the suspension is unjustified.[2]

In the present case, upon receipt of the decision of the Civil Service Commissioner finding petitioner-appellant guilty, but even before the period to appeal had expired, respondents dismissed the latter from the service and another one was appointed to replace him. The separation of petitioner before the decision of the Civil Service Commissioner had become final was evidently premature. Respondents should have realized that the employee still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period, and the possibility of that decision being reversed or modified. As it did happen, on such appeal by the petitioner, the penalty imposed by the Commissioner was reduced by the reviewing Board to only 2 months suspension. And yet, by respondents' action, petitioner was deprived of work for more than 2 years. Clearly, Abellera's second suspension from office, from July 10, 1961 to November 10, 1963, was unjustified[3] and the payment of the salaries corresponding to said period is, consequently, proper.⁴ Otherwise, Abellera, in effect, suffer a suspension longer than that meted him by the Civil Service Board of Appeals.

It is also contended by the respondents-appellants that under its charter, the City of Baguio is exempted from liability for damages or injuries caused by the failure of any city officials to enforce any provision of law or ordinance, or by the negligence of said officials in enforcing or attempting to enforce the same (Sec. 2547, Rev. Adm. Code). But, this is not an instance of "failure" of the city officials to take action or "negligence" in the enforcement of the law. The unjustified action of the respondents here is not that it was the product of negligence, than of haste or overzeal. The exempting provision invoked is not, therefore, applicable.

Respondents-appellants, likewise, cited a 1959 ruling of the Auditor General to support their contention that the payment of back salaries of suspended employees depends upon the discretion of the proper department head. It may be pointed out that the aforecited ruling, part of which was quoted in appellants' brief (pp. 13-14), was

referring to the authority of the Civil Service Commissioner to suspend employees pursuant to Section 695 of the Revised Administrative Code. The ruling, therefore, must have been based on Section 260 of the same Code which provides that when the chief of a bureau or office suspends a subordinate official or employee, the person suspended shall not receive pay during the suspension, unless so ordered by the department head. These provisions of the Revised Administrative Code, however, are deemed to have been superseded by Republic Act 2260 (Revised Civil Service Act), which contained provisions on Discipline of government officials and employees (Chapter VII), and on preventive suspension (Sec. 35). And, under this later legislation, the authorization of the department head is no longer necessary before back salaries may be paid.

Coming to the petitioner-appellant's assignment of error, we have to sustain the ruling of the lower court. Considering that there is no question that by petitioner's act, which was found even by the Civil Service Board of Appeals to be negligent, the city lost the amount of P8,750.48, his dismissal by the respondent city officials cannot entirely be attributed to malice or bad faith. In the absence of positive showing to the contrary, we have to accept respondents' explanation that the action complained of was prompted by their belief that it was being done for the best interest of the city government.

In view of the foregoing considerations, the decision appealed from is hereby affirmed, with costs against respondents-appellants.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Upon the request of the City Treasurer, the City Council created on December 2, 1963, the position of Special Deputy in the office of the City Treasurer, with compensation at P3,960.00 per annum, purposely to accommodate Abellera.

[2] Reyes vs. Hernandez, 71 Phil. 397; Villamor, et al. vs. Lacson, et al., G. R. No. L-15945, Nov. 28, 1964.

[3] Sison vs. Pajo, G. R. No. L-18443, May 31, 1965; Bautista vs. Peralta, et al., G. R. No. L-21967, Sept. 29, 1966.

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