

HECTOR G. PALILEO, PETITIONER, VS. LT. COL. FRED RUIZ CASTRO, JUDGE ADVOCATE GENERAL OF THE ARMED FORCES OF THE PHILIPPINES, LT. COL. G.P. TOMAS, CHIEF, FINANCE SERVICE OF THE A...

G.R. No. 3261. December 29, 1949

Ponente: TUASON, J.

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TUASON, J.:

Hector G. Palileo applies for the writ of mandamus to Lt. Col. Fred Ruiz Castro, Judge Advocate General, Lt. Col. G.P. Tomas, Chief, Finance Service, and Capt. D.S. Miranda, Chief and Supervisor, Claims Service Branch, all of the Armed Forces of the Philippines, to compel them "to release the arrears in pay of the petitioner" upon the following facts:

In 1945 the petitioner filed a claim for arrears in pay as captain of a guerrilla unit. The claim was adjudicated and the papers were forwarded to the Finance Service, Philippine Army, for payment. But sometime in 1948, when the petitioner was employed in the Philippine National Bank, he identified the signatures of certain persons as the supposed payees of several guerrilla checks, and on the strength of his certification the checks were cashed. The alleged payees turned out to be impostors, and one Rogelio Zaide, Palileo's friend and relative who engineered the frauds was prosecuted and convicted, the petitioner coming out as the star witness for the prosecution. Against Palileo no evidence of criminal complicity was found, but—so it was said in the course of the oral argument—he was separated from the service of the bank or required to resign.

As a result of petitioner's intervention in the cashing of the forged checks, the payment of his claim for arrears in pay was withheld. He was so notified and informed that the suspension of the payment was in obedience to the advice of the Judge Advocate General.

In their return, the respondents allege that they "acted only as subordinates of the Chief of Staff, Armed Forces of the Philippines, who represents the Army as the agent of the United States Army in the payment of the latter's obligation"; that they "as subordinates of the Chief of Staff, AFP, can not act independently at their own exclusive responsibility, except upon instructions, directives, orders or command of their commander, the Chief of Staff, AFP"; that respondent Capt. D.S. Miranda is a mere chief of a section in the Finance Service, the chief of which is Lt. Col. G.P. Tomas; that the former receives his orders and instructions from Lt. Col. Tomas and the latter receives his in the performance of his duties from the Chief of Staff, who in turn is "the agent of the United States Army in the payment of the obligations of the latter." They further allege that the check covering the petitioner's claim is no longer in their possession, the same having been recalled by the "Adjutant General Records Depository, Philcom, United States Army" for rechecking and investigation.

These allegations, which are not disputed, speak for themselves and constitute complete defenses to mandamus.

All persons whose duty it is to perform the act sought to be enforced by mandamus are necessary as well as

proper party respondents. Lt. Col. Ruiz Castro has had nothing to do with the withholding of the payment in question beyond rendering an opinion upon request of one of his co-respondents, and the other respondents are more subordinates and have no duty other than that of following orders of the Chief of Staff of the Philippine Army and officers of the United States Army in charge of processing guerrillas entitled to pay and directing the payment of arrears in pay. Admittedly none of the respondents share this authority.

It will thus be seen that the wrong parties have been sued. But brushing aside the defect of parties, the petition should be dismissed on other grounds.

It is a well-settled rule that the legal right of the petitioner to the performance of the particular act which is sought to be compelled by mandamus must be clear and complete. A clear legal right within the meaning of this rule means a right clearly founded in, or granted by law; a right which is inferable as a matter of law. It is essential that the claim should have been allowed by the officer vested with power to allow or reject it. Mandamus will not be awarded unless the right to relief is clear at the time of the award. If there is any discretion as to the taking or not taking of the action sought to be enforced, there is not a clear case of a legal right. Nor will mandamus issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising mere technical question will be disregarded if the right is clear and the case meritorious. (53 C.J.S., 92-95.)

Plaintiff has no clear legal right to arrears in pay. The funds out of which his claim is to be paid, if allowed, belong to the United States Government, and the allowance of his claim is subject to conditions with the existence of which the officer called upon to grant it has to satisfy himself. Such function is not ministerial and specific but discretionary. Although the petitioner's claim had previously been allowed, the withdrawal of the approval before payment was effected places the claim in the same situation as if it had never been acted upon. Where, after allowance of the claim, payment thereof has been ordered stopped, a ministerial officer can not be compelled by mandamus to make such payment. (55 C.J.S., 261.)

One other essential requisite for the issuance of the writ of mandamus is that the act sought to be performed is practical. This requirement is imposed by the very nature of the relief. The check which the petitioner wants to be released having been cancelled by superior orders, it would be beyond the respondents' power to comply with any mandate this court might make in the premises. The question of good and bad faith in the cancellation of the warrant and the fact that the cancellation was made after proceedings for mandamus had been commenced, do not alter the case. We are confronted with a fact, not a theory.

The claimant's remedy under the circumstances, if he has any, is by appeal to proper superior officers of the United States Army or Government or by action in appropriate court if this be feasible.

The petition is denied without costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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