

**EVELIO B. JAVIER, RIZAL G. PAGTANAC, JOVITO C. PLAMERAS, JR.,
SILVESTRE E. UNTARAN, JR. AND ALFONSO V. COMBONG, JR.,
PETITIONERS, VS. HON. COURT OF APPEALS, MAXIMIANO SENTINA,
J...**

G.R. No. 49065. June 01, 1994

Ponente: VITUG, J.

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VITUG, J.:

The issues raised in this petition for review on certiorari revolve around the validity of Resolution No. 206 of the Provincial Board of Antique abolishing the Office of the Provincial Engineer.

On 19 April 1974, Provincial Engineer Maximiano Sentina and forty (40) officials and employees of the Office of the Provincial Engineer filed a petition for mandamus and damages against the entire Provincial Board of Antique. The petition was anchored on the hypothesis that the abolition of the Office of the Provincial Engineer was a circumvention of the constitutional mandate on security of tenure and intended only to weed out provincial officials and employees who opposed the Provincial Board's candidacy in the 08th November 1971 elections.

Respondents, denying petitioners' ascriptions, insisted that the abolition of the Office of the Provincial Engineer was motivated instead by a provision of Presidential Decree No. 17, which lowered the internal revenue allotment to the road and bridge fund of the province from 50% to 17.5% thereby leaving an inadequate allotment for materials, salaries and operating expenses of the Office of the Provincial Engineer. Respondents averred that the power of the provincial board to create an office carried with it the power to abolish it; that administrative remedies had not been exhausted by petitioners; and that mandamus was an improper remedy inasmuch as the power to appropriate funds for the Office was not ministerial but within the sound judgment of respondents.

In due course, the lower court^[1] rendered a decision. Finding for respondents, the court held that the "drastic decrease in the amount available for appropriation" was the principal consideration that impelled the Provincial Board to abolish the Office. The court a quo also took note of the resolutions of several municipal councils in Antique calling the attention of the Provincial Board to the neglect in the maintenance of provincial roads. The lower court decreed:

"PREMISES CONSIDERED, the Court finds and so holds that Resolution No. 206, Series of 1973, was validly enacted by the herein respondents, composing the Provincial Board of Antique, and consequently dismisses the herein petition. Likewise, the counterclaim is dismissed. Without costs.

SO ORDERED."

A motion for the reconsideration of the decision of the lower court having been denied, petitioners appealed to the Court of Appeals.

On 15 February 1977, the appellate court, reversing the court a quo, held that "the passage of Resolution No. 206

was prompted in the main by reasons other than those stated therein," and that the evidence on record "adequately justifie(d) the charge that personal and political animosities on the part of petitioner Sentina, on (the) one hand, and respondents, on the other, (had) caused the respondent Provincial Board to enact said resolution." [2] The appellate court rendered judgment, [3] thus:

"WHEREFORE, the judgment appealed from is hereby reversed and set aside. In lieu thereof, another one is rendered (a) declaring Resolution No. 206, Series of 1973 of the Provincial Board of Antique, to be null and void; (b) granting the writ of mandamus, and ordering the respondents, or their successors as members of the Provincial Board of Antique, to reinstate the petitioners to the positions they held in the Office of the Provincial Engineer as of June 30, 1973; and to appropriate the necessary amounts for the maintenance of said office and the payment of the back salaries of the petitioners from July 1, 1973 until the date of their reinstatement, minus the sums any of the petitioners may have received from other employments in the meantime; (c) ordering the respondents, jointly and severally, to pay each of the petitioners the amount of P3,000.00, P2,000.00 and P500.00 for moral damages, exemplary damages and attorney's fees, respectively; (d) ordering the lower court to conduct further proceedings to determine the amount allowable as back salaries to each of the petitioners in accordance with the guidelines stated above; and (e) ordering the respondents-appellees to pay the costs.

"IT IS SO ORDERED."

On 14 September 1978, the Court of Appeals denied, for lack of merit, the motion for reconsideration.

The Provincial Board thereupon instituted the instant petition for review on certiorari.

On 18 August 1982, during the pendency of this appeal, Enrique A. Zaldivar, then incumbent governor of Antique, filed a motion for leave to intervene, [4] which the Court granted. [5] Governor Zaldivar contended, in his memorandum in intervention, that should the displaced officials and employees of the Office be reinstated and paid their back salaries from 01 July 1973, it would be to the great sacrifice of Antique's development programs. [6]

Critical in the instant petition are two basic questions: whether or not the provincial board had the authority under the then existing laws to enact the questioned resolution, and, in the affirmative, whether or not that authority was legitimately exercised.

Private respondents claim that the abolition of the Office of the Provincial Engineer is not only constitutionally infirm but also violative of General Order No. 3 issued shortly after the proclamation of martial law in 1972. Private respondents explain that Section 9, Article XVII, of the 1973 Constitution –

"SEC. 9. All officials and employees in the existing Government of the Republic of the Philippines shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors." –

has been so framed as to allow the policy and purpose behind General Order No 3 to continue, i.e., to consolidate in the hands of the President, the power to appoint, dismiss and control all officials of the government, both national and local, in line with the nature and spirit of martial law. [7] Respondents quote a portion of the Journal of the Constitutional Convention during its 287th plenary session of 25 November 1972, where their counsel, Arturo Pacificador, a constitutional convention delegate, stated on the floor during the discussions on Section 9, Article XVII, of the 1973 Constitution, that "x x x the local government unit who may believe that an office they (have) created is no longer necessary may petition the President to issue a decree abolishing the same, but it will be beyond their power to abolish by themselves said office in view of the clear' mandate of the provision of the

Constitution.”[8]

Undoubtedly, Section 9, Article XVII, of the 1973 Constitution did convey an authority to carry out a valid reorganization in any branch or agency of the Government,[9] recalling to mind General Order No. 3 issued on 22 September 1972, but this general provision could not have meant or envisioned an absolute proscription on local governments, if and when minded, from themselves creating or abolishing positions, an authority that they theretofore had under the then existing laws. One such law was Section 18 of Republic Act No. 5185 (Local Autonomy Act), then still in force, which empowered provincial governments to create, among other positions, the office of a provincial engineer. While the law did not expressly vest on provincial governments the power to abolish that office, absent, however, any contrary provision, that authority should be deemed embraced by implication from the power to create it. Section 23 of the Act, in fact, expressed that an "implied power of a province x x x (should) be liberally construed in its favor" and "(a)ny fair and reasonable doubt as to the existence' of the power should be interpreted in favor of local government and it (should) be presumed to exist."

We must rule then that the power of the province of Antique to abolish the office in question did exist at the time.

The real debatable issue focuses on the real reasons behind the questioned action of the provincial board. An abolition of office is not per se objectionable but this rule carries a caveat that the act is done in good faith.

We have scrutinized closely the records, most especially in this case, in view of the disagreement between the trial court and the appellate court on their factual findings; the result of our examination is that there, indeed, appears to be evidence to support their own respective findings. On the one hand, valid reasons have been shown that tend to substantiate the need at the time for the abolition of the office in question by the Provincial Board. Upon the other hand, it cannot be discounted that personal and political motives did contribute in no small measure in that final decision of the board. In sum, we see a situation where the abolition of the office could have well been justified except for the convexity of circumstances attendant to the decision process that clearly appear to have greatly influenced the final action taken by the board. "We are not prepared, however, to conclude a clear case of bad faith on the part of respondents.

Given the peculiar factual settings heretofore expressed, we would have, under ordinary circumstances, simply issued an order of reinstatement. The Court cannot, however, close its eyes to the multifarious and significant events that have since taken place on, among other things the national and local government structures, as well as their offices and incumbents; the law itself, both constitutional and statutory; as well as the personal and other circumstances of concerned parties, including no less than petitioners and private respondents themselves. It is our considered view that in lieu of an order for reinstatement of private respondents, an award for backwages, equivalent to five (5) years without qualification or deduction, should be paid to said respondents.

The above holding is not without precedent. The Court had an opportunity to adjudicate similarly in *Rubio, et al., vs. People's Homesite & Housing Corporation, et al.*[10] There, the petitioners, who were issued original and permanent appointments by the PHHC in the Multi-Storey Tenement Projects, occupying regular and permanent positions, were improperly separated from service in 1966 due to an alleged abolition of positions. In awarding back salaries, in lieu of reinstatement, this Court, speaking through now Chief Justice Andres R. Narvasa, said:

"The Court therefore also declares that the Trial Court was correct in directing reinstatement of the petitioners-employees to their former positions, and the payment to them of back salaries and other benefits they would otherwise have earned.

"This is however no longer an easy matter. In the first place, it is doubtful if reinstatement as a remedy would be feasible in view of the fact that more than twenty-three (23) years have already elapsed since the petitioners-employees' positions were abolished. Many of them will have found employment elsewhere. Some

may have passed away. Many others will have reached retirement age or will no longer be employable on account of age or inadequacy of qualifications, by this time. In the second place, as the PHHC and the other respondents allege, it would be unfair to "permit a dismissed laborer to earn back wages for all time," or for a very long period of time, without allowing the employer to prove the salaries the laborer had earned during the period of his separation, or what efforts he had exerted to find gainful employment; x x x."

In *Antiporda vs. Ticao* (160 SCRA 40), the Court, citing previous cases, held that since the reinstatement of an employee unjustly terminated was no longer feasible, the latter should instead be awarded "backwages equivalent to five (5) years without qualification or deduction."

WHEREFORE, the decision of the Court of Appeals is SET ASIDE. In lieu thereof, JUDGMENT is hereby rendered ORDERING petitioners, or their incumbent successors in the Provincial Government of Antique, to cause to be paid to private respondents back salaries, computed as of the date of their removal, equivalent to five (5) years without qualification or deduction. No costs.

SO ORDERED.

Feliciano (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Presided by Judge Celso L. Magsino.

[2] Rollo, p. 94.

[3] Penned by Associate Justice Conrado M. Vasquez and concurred in by Associate Justices Delfin Fl. Batacan and Jose B. Jimenez.

[4] Rollo, p. 433.

[5] Resolution of September 29, 1982; Rollo, p. 437.

[6] Rollo, p. 442.

[7] Private Respondents' Comment on the Petition, p. 3; Rollo, p. 258.

[8] Rollo, pp. 262-263. The existence of this portion of the Journal of the Constitutional Convention was belied by petitioners' counsel, former Associate Justice of this Court, Calixto O. Zaldivar, who appended to petitioners' reply brief, the letter of 1971 Constitutional Convention President Diosdado Macapagal stating that the 287th plenary session of the Convention was held on November 26, 1972, not on November 25, 1972, that the purported interpellation or speech of Arturo Pacificador during said plenary session did not occur at all and that there were indeed reports about fabricated speeches inserted in the Constitutional Convention Journal (Rollo, p. 343).

[9] *National Land Titles and Deeds Registration Administration v. Civil Service Commission*, 221 SCRA 145.

[10] 185 SCRA 656, 22 May 1990.

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