

ADELAIDO HERRERA, PLAINTIFF-APPELLEE, VS. IÑAKI LARRAZABAL, IN HIS CAPACITY AS CITY MAYOR AND IN HIS PERSONAL CAPACITY, JESUS B. LLADOC, IN HIS CAPACITY AS ACTING CITY MAYOR; AN...

G.R. No. 54081. April 27, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This case was certified to this Court by the former Court of Appeals[1] the issue raised herein being purely legal, which is whether the lower court correctly interpreted paragraph 2 of the Amicable Settlement in relation to Section 16 of the Police Act of 1966 (Republic Act No. 4864).

It appears that on October 21, 1960, appellee Adelaido Herrera was appointed patrolman of the Ormoc City Police Department, Ormoc City. On August 4, 1967, the City Mayor of Ormoc City suspended him from office because of the filing of a criminal case against him for serious physical injuries thru reckless imprudence (Criminal Case No. 9225). On March 19, 1968, the City Court of Ormoc City dismissed Criminal Case No. 9225, exonerating appellee of the crime charged.

On February 11, 1969, a case for public disturbance (Criminal Case No. 9804) was filed against appellee in the City Court of Ormoc City, for having allegedly created trouble while drunk during the barrio fiesta of Barrio Valencia, Ormoc City. For grave misconduct, serious irregularities and drunkenness appellee was charged administratively on February 14, 1969, by barrio captain Pedro Codilla of Valencia, (Administrative Case No. 953) with the Board of Investigators, Police Commission (POLCOM) at Ormoc City.

On November 2, 1970, the City Court of Ormoc City rendered a decision in Criminal Case No. 9804, acquitting appellee of the crime charged.

Because of his acquittal in the two (2) criminal cases and after the lapse of more than sixty (60) days from the filing of Administrative Case No. 953, appellee wrote a letter dated November 30, 1971 to appellant Iñaki Larrazabal, then City Mayor of Ormoc City, seeking his immediate reinstatement as patrolman. The request, however, was denied by appellant City Mayor.

On January 10, 1972, appellee filed a case for mandamus and damages in the then Court of First Instance of Leyte against appellant Iñaki Larrazabal, in his capacity as City Mayor and in his personal capacity, praying that judgment be rendered ordering the latter to immediately reinstate him in office and to pay is back salaries from the time of his suspension, plus damages and attorney's fees. Appellant filed his answer. Thereafter, the parties filed an Amicable Settlement, stating among others, the following:

"1. That defendant agrees to reinstate the plaintiff to his position as Patrolman, OCPD, Ormoc City, from which plaintiff had been suspended since August 4, 1967, effective February 1, 1972;

"2. That defendant also agrees to pay back salaries due to the plaintiff, from the time of his suspension to the time of his reinstatement; provided, however, that said payment of plaintiff's back salaries shall be paid immediately only upon receipt of the Mayor's Office or any official entity or Department of the City Government, of the final decision of the Police Commission, Manila, exonerating the plaintiff of the pending administrative case filed against the latter with said body;

"3. That both parties agree to waive all other claims, benefits and damages as stated in the complaint of the plaintiff and counterclaim of the defendant;

"WHEREFORE, it is most respectfully prayed of this Honorable Court that a decision be rendered based on the foregoing amicable settlement."

On February 3, 1972, the lower court rendered a decision in accordance with the foregoing amicable settlement.

On May 16, 1972, after the decision became final and executory, appellee filed an Omnibus Motion to declare other appellants Jesus B. Lladoc, Acting City Mayor of Ormoc City and Godofredo Sevilla, Acting City Treasurer, in contempt of court for their refusal to reinstate appellee as patrolman and to pay his back salaries. Appellee, likewise, prayed for the issuance of the corresponding writ of execution.

Appellants, represented by the City Fiscal of Ormoc City, opposed appellee's Omnibus Motion invoking paragraph 2 of the Amicable Settlement; that since appellants had not yet received the final decision of the Police Commission, the obligation of the city government to pay his unpaid salaries under the Amicable Settlement had not yet accrued; hence, appellee's motion for the issuance of a writ of execution was premature. Appellants, likewise, informed the trial court that appellee had already been reinstated in the service.[2]

Acting on appellee's Omnibus Motion and the opposition thereto, the lower court issued an Order on May 23, 1973 directing appellants to pay the back salaries of appellee from October 4, 1967 until January 31, 1972 (or after the lapse of the 60 day period from the time of his suspension until the time of his reinstatement), invoking the letter dated March 27, 1972, of the Assistant Commissioner, Legal Affairs, Department of the POLCOM, which required appellants to comply with the provisions of Section 16, Republic Act No. 4864 (Police Act of 1966) since appellee has been undergoing an indefinite preventive suspension despite the dismissal of the criminal charges against him. The lower court further ruled:

"From the foregoing letter and citation of Section 16, Republic Act No. 4864, it is clear that the Amicable Settlement should be interpreted in accordance with the aforesaid section, so that what the respondent can withhold is only the salary of the petitioner for the sixty (60) days of his suspension from 4 August 1967, as provided for in the last sentence of the aforesaid Section 16. His salary from 4 October 1967 up to the present cannot be withheld, on the well-known principle of jurisprudence that ours is a government of laws and not of men, and that the rule of law must be respected and honored by all.

"This Court cannot cite respondents for contempt as no writ of execution has as yet been issued."[3]

On May 30, 1972, appellants filed a motion for reconsideration of the above order, which the lower court denied in an Order dated May 30, 1972. Consequently, the Clerk of Court issued a writ of execution on August 10, 1972 directing the Provincial Sheriff of Leyte to collect from appellants the unpaid salaries of appellee from October 4, 1967 until January 31, 1972 and deliver the same to the latter.

On July 10, 1972, appellant City Treasurer paid appellee the amount of P3,278.92 representing one-third (1/3) of his unpaid back salaries in the total sum of P9,836.77[4] and that appellee's counsel was paid his attorney's fees in the sum of P1,400.00[5] and P850.00[6] which amount was taken from the balances of the unpaid back salaries of appellee, thus leaving an unpaid balance of P4,307.85.

On October 25, 1972, the POLCOM, in Administrative Case No. 953 ordered the suspension of the appellee pending final decision by the Adjudication Board pursuant to PD No. 12-A.[7] On February 21, 1973, the Adjudication Board No. 3 of the National Police Commission (NAPOLCOM) rendered a decision in Administrative Case No. 953 finding appellee guilty of grave misconduct, serious irregularities and drunkenness and ordering his dismissal from the service with prejudice.[8]

Consequently, appellant City Treasurer refused to pay the unpaid balance of P4,307.85 which prompted appellee to file a motion dated June 23, 1973 for the issuance of an alias writ of execution for payment of the unpaid balance. On August 4, 1973, the lower court issued the questioned Order directing the issuance of a writ of execution for the uncollected balance of P4,307.85 due to the appellee.

On August 16, 1973, appellants filed a motion for reconsideration of the questioned Order, which was denied by the lower court in an Order dated August 18, 1973. Appellants appealed to the Court of Appeals submitting six assignment of errors, which may be synthesized into one principal issue, namely the correctness of the lower court's interpretation of paragraph 2 of the Amicable Settlement in relation to Section 16 of the Police Act of 1966. Stated otherwise, is appellee entitled to the payment of back salaries from the time of his suspension on August 4, 1967 until his reinstatement on February 1, 1972 notwithstanding the decision of the NAPOLCOM finding him guilty of the crime charged?

The appeal is impressed with merit.

There is no dispute that the Amicable Settlement of February 3, 1972 clearly states that appellant City Mayor agrees to pay back salaries due appellee from the time of his suspension to the time of his reinstatement only upon receipt by appellant of the final decision of the Police Commission exonerating appellee of the administrative case (Administrative Case No. 953). It is likewise indisputable that on February 21, 1973, the NAPOLCOM, Adjudication Board No. 3 Quezon City, rendered a decision in Administrative Case No. 953 finding herein appellee guilty of the charges and orders his dismissal from the service with prejudice. There is no denying, therefore, that viewed from the terms of the Amicable Settlement and the final decision of the NAPOLCOM in Administrative Case No. 953, appellee is not entitled to the payment of back salaries from the time of his suspension until his reinstatement.

But is the Amicable Settlement valid and binding as to appellee?

The lower court ruled that the Amicable Settlement should be interpreted in accordance with Section 16, Republic Act No. 4864, so that what appellant can withhold is only the salary of the appellee for the 60 days of his suspension from August 4, 1967 but not his salary after the 60-day suspension until his reinstatement.

Section 16, Republic Act No. 4864 provides:

"When an administrative charge is filed under oath against any member of the local police agency, City Mayor and municipal mayor, as the case maybe, may suspend the respondent. x x x The preventive suspension shall not be more than sixty (60) days, after which the respondent shall be reinstated to the service without prejudice to the continuation of the case until its final disposition. x x x The respondent shall be entitled to his salary for the period of suspension upon exoneration.

"When a member of the police force or agency is accused in court of any felony or violation of law. x x x The city mayor or municipal mayor concerned, shall immediately suspend the accused from office pending the final decision by the court, and in case of acquittal, the accused shall be entitled to immediate reinstatement and the payment of the entire salary he failed to receive during his suspension; Provided, however, that trial and disposition of criminal cases against members of the police force shall be accorded priority by the courts."

From the aforecited section, first paragraph, it is clear that a person charged administratively and who has been preventively suspended shall be entitled to his salary for the period of suspension only upon exoneration. Even if said paragraph also provides that the preventive suspension shall not be more than sixty (60) days, the same only refers to the right of the suspended policeman to be reinstated to the service after the lapse of the 60-day period, as explicitly stated in said section that: "The preventive suspension shall not be more than sixty days, after which, the respondent shall be reinstated to the service x x x." Consequently, even if appellee was not reinstated to the service even after the lapse of the 60-day period, that does not mean that, upon reinstatement, he will be entitled, as a matter of right to his unpaid salaries for the whole period of his suspension. A suspended member of the Police Force is so entitled only upon exoneration.[9] This proposition is bolstered by Section 4, Rule X of the Police Manual, which provides:

"Section 4. Payment of Salary during the Period of Preventive Suspension. - When a member of a city of municipal police force is exonerated by the Police Commission, the respondent member shall be entitled to receive the entire salary he failed to receive during the period of his preventive suspension." (Italics ours)

Similarly, section 7 of PD No. 12-A promulgated on October 4, 1972 provides:

"Members of the Police force who have been preventively suspended shall, upon exoneration, be entitled to immediate reinstatement and payment of the entire salary they failed to receive during the period of suspension." (Italics supplied)

Hence, even if appellee was acquitted of the two (2) criminal charges and that second paragraph of aforecited section 16, Republic Act No. 4864 provides that "in case of acquittal, the accused shall be entitled to immediate reinstatement and the payment of the entire salary he failed to receive during suspension," nevertheless, paragraph 2 of the Amicable Settlement of February 3, 1972 specifically provides that the back salaries of the appellee shall be paid only upon receipt by appellant City Mayor of the final decision of the NAPOLCOM, Manila, exonerating appellee from the administrative case. The Amicable Settlement, being in accordance with law and was accordingly approved by the lower court in its Order of February 3, 1972, the same is valid and binding upon the parties,[10] especially as to appellee herein. Since appellee was dismissed from service, per decision of the NAPOLCOM in Administrative Case No. 953, he is not entitled to his back salaries for the period during which he was under suspension. As discussed above, he is so entitled only upon exoneration.

WHEREFORE, the Order of the lower court dated August 4, 1973 directing the issuance of an alias writ of execution in favor of appellee for the uncollected balance of P4,307.85 is hereby set aside. No costs. SO ORDERED.

Makasiar, Acting C.J., Concepcion, Jr., and Guerrero, JJ., concur.

Aquino and Abad Santos, JJ., in the result.

Escolin, J., no part.

[1] Resolution dated May 30, 1980, Seventh Division: Escolin, J., ponente; Villasor, J. and Villaluz, J., concurring.

[2] pp. 28-30, Original Records.

[3] p. 46, Rollo.

[4] p. 70, Original Records.

[5] p. 99, Ibid.

[6] p. 138, Ibid.

[7] p. 109, Ibid.

[8] pp. 143-146, Original Records.

[9] Tobias vs. Veloso, 100 SCRA 177, 185.

[10] Mabale vs. Apalisok, 88 SCRA 234; Tria vs. Lirag, 1 SCRA 1207; Commissioner of Public Highways vs. Burgos, 94 SCRA 731.

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