

**GODOFREDO M. TRINCHERA, PETITIONER, VS. FELIX F. EAMIGUEL,
IN HIS CAPACITY AS APPOIN-TIVE CITY ENGINEER OF ORMOC CITY,
THE HON. EXECUTIVE JUDGE SECRETARY, RAFAEL M. SALAS, AND
P...**

G.R. No. 54167. July 08, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petitioner-appellant, a registered civil engineer, is a career employee in the government service. Starting 1949, he has held various positions in the government culminating in his appointment as City Engineer of Ormoc City in November 1956. As such and pursuant to R.A. 3619, he concurrently held the position of ex-officio District Engineer of the Second Highway Engineering District since July 7, 1963.

On July 14, 1966, administrative charges for Malversation of Public Funds, Dishonesty, Falsification of Public Documents, Illegal Use of Government Property and Violation of Anti-Graft and Corrupt Practices Law otherwise known as R.A. 3019 were filed against him.

On January 5, 1967, he was ordered suspended indefinitely by respondent Hon. Rafael M. Salas, the then Executive Secretary. Almost simultaneously, respondent Engineer Felix F. Eamiguel was designated as Officer-in-Charge of the City Engineer's Office of Ormoc City in petitioner-appellant's place during the latter's suspension. Respondent Eamiguel assumed duties as Officer-in-Charge on January 16, 1967.

During the administrative investigation of the charges against him, petitioner remained suspended despite the lapse of the 60-day limit prescribed by law. He then filed on May 4, 1967 a petition for certiorari with this Court which was docketed as G.R. No. L-27519, seeking the annulment of his indefinite suspension which had already exceeded the 60-day limit allowed by Section 35 of R.A. 2260[1] having expired on March 15, 1967. While the aforesaid case,[2] was then pending with this Court, HIS EXCELLENCY, President Ferdinand E. Marcos, issued Administrative Order No. 97 dated December 4, 1967 ordering the removal of the petitioner from Office (as City Engineer of Ormoc City) effective as of the date of his suspension. Petitioner was served with a copy of the said Administrative Order on February 16, 1968.

By virtue of Administrative Order No. 97 finding petitioner-appellant guilty of the charges against him, this Court, in a Resolution promulgated on February 21, 1968, dismissed G.R. No. L-27519, the same having become moot and academic.

On February 22, 1968, petitioner filed with the Office of the President a Motion for Reconsideration of the aforesaid order of dismissal.[3] In the meanwhile, respondent Felix F. Eamiguel (the designated officer-in-charge of the City Engineer's Office of Ormoc City) was nominated by the President as City Engineer of Ormoc City on April 16, 1968. His nomination was confirmed by the Commission on Appointments on May 14, 1968.

Petitioner then filed with the then Court of First Instance of Leyte (Ormoc City branch) Special Civil Action No.

944-0 for: REINSTATEMENT TO PUBLIC OFFICE, QUO WARRANTO, DECLARATORY RELIEF AND CERTIORARI, alleging therein —

"7. That there is a clear indication that political pressures were brought to bear upon the appointing and removing power in effecting the removal of petitioner based upon alleged questionable charges pointing to certain acts supposedly committed wayback in the year 1964 and 1965, and said removing power had prejudged the administrative case by petitioner's indefinite suspension (preventive) and eventual removal allegedly on the claim that petitioner "holds office at the pleasure of the President", but, at the same time charging petitioner administratively evincing the presidential determination to remove petitioner at all costs without legal cause and without due process of law, hence, the removing authority has shown partiality, if not prejudice, being the accuser, prosecutor investigator, judge and executioner and without express statutory remedy of appeal, unlike those embraced within the 'classified' civil service.

8. That the power of removal should have been exercised strictly on the grounds and in the manner provided by law, but petitioner was found guilty of malversation of public funds, illegal use of government property and a violation of the Anti-Graft and Corrupt Practices Act (R.A. 3019) which are not legal grounds or causes for removal as provided by law ... for such acts constituting as they do crimes involving moral turpitude, or well-defined by special law, criminal conviction must precede administrative action. Hence, there was no legal basis for administrative action against petitioner who was not even criminally charged.

9. That with the passage of Republic Act 1080 on June 15, 1954, as amended by Republic Act 1844, declaring the examinations given by the government for engineers as civil service examinations, the petitioner's office (City Engineer of Ormoc) ipso jure now falls within the competitive or classified service, and petitioner himself, by operation of law, has been conferred a first grade civil service eligibility as contemplated by Art. II, Sec. 4 of R.A. 2260 and Art. XII, Sec. 1 of the Philippine Constitution and petitioner is entitled to avail himself of the benefits bestowed upon those in the 'classified service', in matters of discipline by administrative action which falls exclusively within the jurisdiction of the Civil Service Commissioner (*Ang-angco v. Cas-tillo*, G.R. 17169, November 30, 1963, 60 O.G. 665, February 1964), and not the President of the Philippines, with right of appeal to the Civil Service Board of Appeals. For the fundamental law expressly conceives a 'uniform' law for all those embraced by our 'civil service' exempting (sic) those in the 'exempt service'. There is no justification, therefore, for the existing practice of distinguishing (in the matter of discipline) between those in the 'classified' service and the so-called 'unclassified' service, as was opportunely observed by the Supreme Court in the *Paulino Garcia* case, citing the case of *Severo Unabia vs. The Hon. City Mayor, et al*, 53 O.G. No. 1, pp. 133-134; *Lacson vs. Roque*, G.R. No. L-3081, October 14, 1949, 84 Phil. 740).

10. That the declaration by this Honorable Court of the rights of petitioner under the aforequoted statutes, the Constitution and jurisprudence, in the light of the crystalizing trend of judicial and legislative thinking affecting the civil service, is necessary and proper at this time under all circumstances and such declaration would terminate the uncertainty or controversy which gave rise to the present action.

11. That in disregarding the provisions of the Civil Service Act, R.A. 1080, as amended by R.A. 1844 and other pertinent statutes in relation to the Philippine Constitution and well-established public policy, in establishing and dignifying the Philippine Civil Service, the respondents have unlawfully excluded petitioner from the use and enjoyment of a right or office, the removing power represented herein by respondent, Executive Secretary, had acted without or in excess of its jurisdiction, or with grave abuse of discretion in its exercise of quasi-judicial functions, and there is no other plain, speedy and adequate remedy in the ordinary course of law."

and praying that judgment be rendered 1) declaring his removal from office under Administrative Order No. 97 null and void since it constitutes a denial of due process and equal protection of the laws; 2) ordering his immediate reinstatement and restoring him to the full use and enjoyment of his office as City Engineer of Ormoc

City; 3) declaring respondent Felix Eamiguel to be unlawfully withholding and exercising the functions of the said office, and to order him to vacate the same; and 4) to order respondent to pay moderate or nominal damages, plus moral damages, attorney's fees and costs.

Only respondents Rafael Salas and Pedro F. Martinez filed an ANSWER. Respondent Eamiguel, instead of filing an Answer, moved to dismiss the petition on the following grounds: 1) that the petition is barred by a prior judgment — Resolution of February 21, 1968 of the Honorable Supreme Court in G.R. No. L-27519; (2) that the court has no jurisdiction over the subject or nature of the action, respondent Eamiguel having been duly appointed as City Engineer of Ormoc City by the President of the Philippines with the consent of the Commission on Appointments; 3) that petitioner holds office at the pleasure of the President pursuant to R.A. 179, Charter of Ormoc City as amended by R.A. 429; 4) that the claim set forth in the petition has been abandoned and/or otherwise extinguished; 5) that petitioner has not exhausted all administrative remedies available to him before filing the instant petition; and 6) that petitioner's dismissal by the President by virtue of Administrative Order No. 97 is final unlike those embraced within the "classified" service.

In a MANIFESTATION and/or MOTION filed, respondents Rafael Salas and Pedro Martinez adopted as their own, Eamiguel's aforementioned Motion to Dismiss.

After hearing and filing by the parties of their respective Memoranda and Citation of Authorities, the court a quo dismissed appellant's petition. Petitioner's motion for reconsideration of the aforesaid order of dismissal having been denied, he ventilated an appeal to the then Court of Appeals, contending that the trial court erred:

"I

In granting respondents' Motion to Dismiss without considering the Opposition and argument of the petitioner;

II

In holding that the petition states no cause of action since he had not exhausted all administrative remedies before filing said petition;

III

In holding that the removal of the petitioner by virtue of Administrative Order No. 97 is equivalent to the expiration of his term of office since petitioner holds office at the pleasure of the President under the Charter of Ormoc City;

IV

In holding that the petitioner ceased to be the City Engineer of Ormoc City upon the appointment of respondent Felix F. Eamiguel;

V

In holding that the petition for reinstatement to a public office was not filed within one year from the effective date of his removal; and

VI

In holding that petitioner lost his right to contest Eamiguel's appointment by neglecting to oppose the latter's confirmation before the Commission on Appointments, which is a recourse available to him."

Acting on petitioner's appeal,[4] the then Court of Appeals in a Resolution promulgated on May 30, 1980, certified the appeal to Us on the ground that it allegedly involves no factual issue but only pure questions of law.

While the instant appeal was then pending in this Court, or more specifically on January 23, 1984, the Office of the President issued Administrative Order No. 474 revoking and/or setting aside Administrative Order No. 97 of December 4, 1964 and ordered petitioner-appellant "reinstated as City Engineer of Ormoc City or to a position in

the government service to which he is qualified without payment of back salaries and other benefits."

Despite his reinstatement pursuant to said Administrative Order No. 474, petitioner-appellant in his MANIFESTATION filed with this Court on July 4, 1984 asserts that the issues involved in his appeal were not rendered moot and academic and that what now remains to be resolved by this Court are - (1) the implementation of said Administrative Order No. 474; and (2) the matter of petitioner's claim for back salaries and other benefits.[5]

Petitioner's submittal is totally bereft of merit. Implementation of Administrative Order No. 474 has never been and could not be an issue in the instant appeal since it is a matter never litigated in the trial court. It was issued long after petitioner-appellant have appealed the Order of Dismissal rendered by the court a quo. Only issues specifically raised before the trial court may be entertained on appeal.[6] So much so that where resignation was the cause for terminating an employee, no other ground may be invoked on appeal as a cause for his dismissal.[7] A change of theory or ground is not permitted on appeal.[8]

Anent petitioner's entitlement to back salaries and other benefits, Administrative Order No. 474 which reinstates him is very categorical and specific on the point. It positively provides that appellant's reinstatement is "without payment of back salaries and other benefits". Furthermore, parties indispensable for the adjudication of such claim, assuming that the same is possible, should be properly impleaded and allowed to file the necessary pleadings in a case specifically filed for the purpose and before the appropriate forum.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the instant appeal is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

[1] Civil Service Law.

[2] G.R. No. L-27519.

[3] Administrative Order No. 97.

[4] CA-G.R. No. 46833-R.

[5] Par. 8, Manifestation filed on July 4, 1984.

[6] Cordero vs. Cabral, 123 SCRA 532.

[7] Tosca vs. NLRC, 123 SCRA 296.

[8] Philippine Rabbit Bus Lines, Inc. vs. Phil-American Forwarders, Inc., 63 SCRA 231.

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