

RODOLFO T. GANZON, PETITIONER, VS. THE COURT OF APPEALS AND LUIS T. SANTOS, RESPONDENTS.

G.R. No. 93252. November 08, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

Before the Court for resolution are the various issues raised by Rodolfo T. Ganzon's urgent motion, dated 7 September 1991, wherein he asks the Court to dissolve the temporary restraining order (TRO) it had issued, dated 5 September 1991, against the TRO earlier issued by the Court of Appeals in CA-G.R. SP No. 25840 entitled *Ganzon vs. Santos, et al.*

On 5 August 1991, the Court's decision in the present case was promulgated, upholding the validity of the orders of preventive suspension issued by respondent Secretary Santos, the dispositive part of which decision reads:

"WHEREFORE, premises considered, the petitions are DISMISSED. The Temporary Restraining Order issued is LIFTED. The suspensions of the petitioners are AFFIRMED, provided that the petitioner, Mayor Rodolfo Ganzon, may not be made to serve future suspensions on account of any of the remaining administrative charges pending against him for acts committed prior to August 11, 1988. The Secretary of Interior is ORDERED to consolidate all such administrative cases pending against Mayor Ganzon.

The sixty-day suspension against the petitioner, Mary Ann Rivera Artieda, is AFFIRMED. No costs."[1]

A brief summary of the facts that led to this Court's decision of 5 August 1991 ("main decision", for brevity) is as follows:

1. Sometime in 1988, a series of ten (10) administrative complaints were filed by various city officials, against petitioner Ganzon, the elected City Mayor of Iloilo City, on various charges such as abuse of authority, oppression, grave misconduct and others.

2. In the course of the hearing of the administrative cases, respondent Secretary Santos issued against petitioner Ganzon three (3) separate orders of preventive suspension dated 11 August 1988, 11 October 1988, and 3 May 1990, each of the orders to last for a 60-day period.

Petitioner assailed the validity of the said orders by filing with the Court of Appeals two (2) separate petitions for prohibition docketed CA-G.R. SP No. 16417 and CA-G.R. SP No. 20736. On 7 September 1988 and 5 July 1990, the appellate court rendered the decision in CA-G.R. SP Nos. 16417 and 20736 dismissing the petitions for lack of merit. Hence, petitioner Ganzon filed with this Court two (2) separate petitions assailing the decision in CA-G.R. SP No. 16417 (subject of G.R. No. 93252), and that in CA-G.R. SP No. 20736 (subject of G.R. No. 95245)[2]

3. On 26 June 1990, we issued a Temporary Restraining Order barring the respondent Secretary from implementing the suspension orders, and restraining the enforcement of the Court of Appeals' two (2) decisions.

However, it appears that even before the promulgation on 5 August 1991 of the main decision, respondent Secretary Santos had issued on 3 July 1991 against petitioner Ganzon another order of preventive suspension in connection with Administrative Case No. 51-90 filed by complainant Octavius J. Jopson, which order states:

"It appearing from a perusal of the complaint as well as the answer in Administrative Case No. 51-90, entitled Octavius J. Jopson, Complainant, versus, Mayor Rodolfo T. Ganzon, Respondent, for Oppression, etc., that there is reasonable ground to believe that Respondent has committed the act or acts complained of, as prayed for by Complainant Jopson, you are hereby preventively suspended from office for a period of sixty (60) days effective immediately." (Underscoring ours)

On 6 July 1991, petitioner Ganzon filed his "extremely urgent motion" (with supplemental motions later filed) questioning the validity of the said last mentioned suspension order. This Court issued a resolution dated 9 July 1991, requiring respondents to comment on petitioner's urgent motion.

After the main decision in the present petitions was rendered by the Court on 5 August 1991, respondents filed motions dated 9 and 29 August 1991 alleging therein that the issues raised in petitioner's motion (6 July 1991) were rendered moot and academic by the said decision, and seeking clarification on whether it was still necessary to comply with this Court's resolutions requiring respondents to file comment on petitioner's said motion of 6 July 1991.

Meanwhile, on 29 August 1991, respondent Santos issued a memorandum addressed to petitioner Ganzon, in connection with the 5 August 1991 main decision, stating therein that the third order of preventive suspension issued against petitioner on 3 May 1990 shall be deemed in force and effect. The memorandum states:

"The Supreme Court, in its Decision in the above-referred cases, which affirmed the authority of the Secretary of Local Government to discipline local elective officials, explicitly states that,

'We are therefore allowing Mayor Rodolfo Ganzon to suffer the duration of his third suspension and lifting for the purpose, the Temporary Restraining Order earlier issued x x x'

In view thereof, the third preventive suspension imposed on you, photo copy of which is hereto attached, is hereby deemed in force."

On 30 August 1991, petitioner Ganzon filed with the Court of Appeals a petition for mandamus, docketed CA-G.R. SP No. 25840 against respondents. On the same day, petitioner filed in these petitions his "manifestation and compliance," alleging that he had already fully served the suspension orders issued against him, in compliance with the main decision of 5 August 1991, and that he should be allowed to re-assume his office starting 4 September 1991.

Meanwhile, in reaction to the memorandum dated 29 August 1991 issued by respondent Santos, petitioner filed in CA-G.R. SP No. 25840 a motion praying for the issuance of a temporary restraining order, which motion was granted by the Court of Appeals, when on 3 September 1991, it (CA) issued the said TRO. On 4 September 1991, respondents filed with this Court a motion asking for the issuance of a restraining order addressed to the Court of Appeals and against the TRO issued in CA-G.R. SP No. 25840. Granting respondents' motion, this Court on 5 September 1991 issued a temporary restraining order directing the Court of Appeals to cease and desist from implementing the TRO it had issued dated 3 September 1991 immediately suspending the implementation of the order of the Secretary of Interior and Local Government dated 29 August 1991. On 9 September 1991, petitioner Ganzon filed a motion to dissolve this Court's restraining order dated 5 September 1991.

The records show that petitioner Ganzon, to this date, remains suspended from office (as the elected Mayor of Iloilo City) and since the order of preventive suspension dated 3 July 1991 (the fourth suspension order[3]) was

issued against him by respondent Secretary; in other words, he has been serving the said fourth suspension order which is to expire after a period of 60 days, or on 4 September 1991.

Similar to the argument raised in his petition filed with the Court of Appeals in CA-G.R. SP No. 25840, petitioner Ganzon, in support of his plea for the lifting of the TRO dated 5 September 1991 issued by this Court, in re: TRO dated 3 September 1991, issued by Court of Appeals, contends that inasmuch as he has already served fully the suspension orders issued against him, in compliance with the mandate of this Court's decision dated 5 August 1991, coupled with the fact that he had also completely served by 4 September 1991 the fourth order of preventive suspension dated 3 July 1991, he should therefore be allowed to re-assume his office starting 4 September 1991.

On the other hand, respondent Secretary maintains that petitioner Ganzon can be allowed to return to his office (as Mayor of Iloilo City) only after 19 October 1991, as it is only after such date when petitioner may be said to have fully served the preventive suspension orders as decreed in the main decision and in the order dated 3 July 1991 (fourth suspension).

The question then is when petitioner Ganzon may be allowed to re-assume his position and duties as mayor of Iloilo City. Is it only after 19 October 1991 as claimed by respondents, or at some earlier date? The answer to this question would depend on how petitioner has served the preventive suspension orders issued against him.

We note that the main decision refers to three (3) orders of preventive suspension each to last for 60 days. The first, dated 11 August 1988, was admittedly fully served by petitioner. The second order dated 11 October 1988 was not served because its enforcement was restrained by an order of the Regional Trial Court of Iloilo City upon petition of petitioner himself.[4] As to the third order dated 3 May 1990, the main decision states that petitioner is allowed to serve the duration of said third suspension order. It would seem, therefore, that after petitioner has served in full the third suspension order as decreed in the main decision, he can then return to his official duties as Iloilo City Mayor.

However, we must also take note of the supervening 3 July 1991 order, again suspending petitioner from office for another 60 days, which order was issued even before the main decision of 5 August 1991 was promulgated. (The records show, however, that petitioner has in fact fully served the fourth suspension order, as admitted by respondents no less. This will be discussed shortly; but any issue on its validity is now moot and academic.[5] Besides, it is clear that this fourth suspension order is not one of the three orders covered by and subject of the main decision).

Considering, nonetheless, the necessity of serving the third and fourth orders of suspension, there is a need to look into when petitioner started to serve these orders so as to determine when their service expires.

Petitioner contends that the following are the periods within which he stayed out of his office as he was serving the orders of preventive suspension issued against him:

FROM Up to and Including

May 4, 1990 May 18, 1990[6]

June 9, 1990 June 26, 1990[7]

July 5, 1991 September 3, 1991[8]

Petitioner argues that for the periods of 4 May to 18 May 1990, and 9 June to 26 June 1990, he was serving the third suspension order; whereas for the period of 5 July to 3 September 1991, he was then serving the fourth suspension order.

On the other hand, respondent Secretary contends that as to the third order of preventive suspension, dated 3 May 1990, petitioner served it only from 4 May 1990 to 19 May 1990.[9] Respondent denies that from 11 June to 30 June 1990[10] petitioner had served again the third suspension order.

As to the fourth suspension order, respondent Secretary confirms that petitioner served it starting from 5 July 1991 to 3 September 1991.[11]

As regards the third suspension order, it is noted that though both parties admit that petitioner started serving it on 4 May 1990, they however differ as to when the service ended (Petitioner claims he served it even after 18 May 1990, whereas, respondent claims it ended 19 May 1990.) In view of this divergence, the Court rules that the third order was served by petitioner from 4 May 1990 up to 18 May 1990 only, the latter date being the date when the Court of Appeals issued a TRO in CA-G.R. SP No. 20736,[12] and thus, interrupted petitioner's service of the suspension orders and enabled him re-assume his office as Iloilo City Mayor.

We also do not accept petitioner's contention that from 9 June 1990 up to 26 June 1990[13] he again started to serve the third suspension order, inasmuch as during the period of 9 June 1990 to 26 June 1990, the records show that he was then in office discharging the functions of the Mayor of Iloilo City.[14] In sum, we rule that petitioner served the third suspension order only from 4 May 1990 up to 18 May 1990.

The period from 4 May 1990 to 18 May 1990 is equivalent to fourteen (14) days.[15] Hence, as to the third suspension order (3 May 1990), petitioner having served fourteen (14) days of the 60-day preventive suspension imposed in the order, 46 days still remained to be served by him as decreed in the main decision. If we follow the mandate of such main decision which ordained that the third order be served and that the temporary restraining order[16] against it be lifted, it would follow that the remaining 46 days should be served starting 5 August 1991 (date of promulgation of main decision) until fully served. Another way to serve the 46 days would be to begin serving it only on 4 September 1991 (the day after 3 September 1991 which was the last day of service for the fourth suspension order), or until 20 October 1991 (the 46th day from 4 September 1991).

However we take note of the fact that petitioner has already fully served the 60-day fourth order of preventive suspension which started 5 July 1991 (that is, even before the main decision was rendered) and ended on 3 September 1991. Petitioner raises the issue of whether he could or should be allowed to serve the third and the fourth orders "simultaneously". If we allow his submission and accept "simultaneous service", it would mean the following: that from 5 August 1991 (the date the TRO issued by this Court was lifted) up to 3 September 1991 (the last day for serving the fourth order), twenty-nine (29) days have elapsed; that these twenty-nine (29) days which form part of his service for the fourth order can be also credited to his favor by treating said twenty-nine (29) days as forming part of his service of the third order; if this were so, he would need to serve only seventeen (17) days more to complete the service of the third order; said seventeen (17) days from 3 September 1991 will expire on 20 September 1991, which would be the last day for serving the third suspension order.

Respondents however object to adopting the idea of "simultaneous service," of preventive suspensions as, according to them, this is not allowed under the Local Government Code.

We agree with petitioner that he can be allowed the benefit of simultaneous service of the third and fourth suspension orders, for the following reasons.

If simultaneous service of two (2) suspension orders is allowed, this would work in favor of the petitioner (an elective local official) as the balance of his third preventive suspension would, in effect, be reduced from 46 days to 17 days.

It will be recalled that, in the main decision, noting that successive suspensions have been inflicted on Mayor

Ganzon, we stated that what "is intriguing is that respondent Secretary has been cracking down, so to speak, on the Mayor piecemeal -- apparently, to pin him down ten times the pain, when he, the respondent Secretary could have pursued a consolidated effort." [17] Surely, allowing petitioner to serve simultaneously the overlapping third and fourth suspensions will favor him, (and presumably the local constituency) and certainly lessen if not offset the harsh effects of whatever motive may be behind the intriguing action of the respondent Secretary in issuing those successive suspension orders.

Furthermore, we may already take judicial notice of the recently-approved Local Government Code of 1991 (recently signed into law by the President) [18] which provides (as to imposition of preventive suspensions) as follows:

"SEC. 63. Preventive Suspension

x x x x x x

b) x x x that, any single preventive suspension of local elective official shall not extend beyond sixty (60) days: Provided, further that in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension." (underscoring ours)

Since we can allow, as we here allow, under the bizarre circumstances of this case, petitioner to serve the third and fourth orders simultaneously (insofar as they overlap), this means that, as explained earlier, petitioner shall serve only 17 days more (not 46 days) to complete the service of the third order, that is, starting from 3 September 1991 and ending on 20 September 1991. Hence, as of this latter date, petitioner has complied with the mandate of the main decision for he has already fully served the third preventive suspension which ended on 20 September 1991.

But then another issue is raised by respondents, i.e. that considering that the main decision refers to the first, second and third orders of preventive suspension (as far as Mayor Ganzon is concerned), petitioner, apart from serving the third order (the first one having been fully served), should also serve the second order (for another 60 days) as the latter has admittedly not been served yet due to a restraining order issued by a trial court, [19] and considering that the dispositive portion of the main decision decreed that "suspensions of petitioners (including the other petitioner Artieda in G.R. No. 93746) are affirmed."

We agree with the respondents on this point.

The main decision refers to the three (3) suspension orders – the first, the second and the third. As shown earlier, the first and the third orders have already been served. It is only the second order which seems to have been unserved. If we follow the decision which states that the three (3) suspensions are affirmed, there appears to be no reason why the second order should not be served for another 60-day period. However, there is no cogent reason why, under the bizarre circumstances of this case - where the respondent Secretary has chosen to impose preventive suspensions piecemeal, instead of consolidating the several administrative cases of similar nature and close vintage – we cannot allow the concept of simultaneous service to apply to the second order (as we did in the third order). It would follow then that the second order is also fully served to this date for the service of said second order would have started on 5 August 1991 (when the main decision was rendered as this was the time when this Court found and affirmed the validity of the three (3) suspension orders, including the second order). The 60-day period from 5 August 1991 expired on 4 October 1991.

It appears that as to the second preventive suspension, petitioner manifested that there is still an existing preliminary injunction issued by the RTC of Iloilo City, Branch 33 in Special Civil Action No. 18312, entitled

Ganzon vs. Santos, et al.[20]

One may ask as to the status of the case pending with the RTC, Iloilo City, Branch 33 insofar as the said case involves the issue on the validity of the second preventive suspension order. Under the main decision of this Court, dated 5 August 1991, the second preventive suspension has been affirmed; under the present resolution, said second preventive suspension has been served. Consequently, Special Civil Action No. 18312 before the Regional Trial Court of Iloilo City has been rendered moot and academic, insofar as the second preventive suspension order is concerned.

As to the petition (docketed CA-G.R. SP No. 25840) filed with the Court of Appeals, which involves the question of the validity of the fourth order, and which has clearly been served, petitioner admitted that he filed it, on the belief that it was the proper remedy for his reinstatement to office; thinking that his suspensions have been served and ended.[21] As we have ruled that petitioner has served the suspension orders decreed in the main decision and in the light of the finding of this Court that the fourth preventive suspension order has been served, the issues raised in CA-G.R. SP No. 25840; have also become moot and academic, warranting dismissal thereof.

WHEREFORE, the urgent motion of petitioner, dated 7 September 1991 is hereby GRANTED. The temporary restraining order dated 5 September 1991 is hereby LIFTED. Respondents are ordered to allow petitioner to re-assume his office as elected Mayor of Iloilo City effective immediately.

The Court of Appeals is directed to dismiss CA-G.R. SP No. 25840 for having become moot and academic. The Regional Trial Court of Iloilo City, Branch 33 before which petitioner's action for prohibition (Special Civil Action No. 18312) is pending is also ordered to dismiss the said case for having become moot and academic insofar as petitioner prays therein to enjoin his (second) preventive suspension.

This resolution is without prejudice to the administrative cases (where the first, second, third and fourth preventive suspension orders were issued) proceeding on the merits thereof. Also, as decreed in the main decision of 5 August 1991.

"x x x petitioner, Mayor Rodolfo Ganzon, may not be made to serve future suspensions on account of any of the remaining administrative charges pending against him for acts committed prior to August 11, 1988. x x x."

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Grino-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.
Melencio-Herrera, J., on leave.

[1] Decision dated 5 August 1991, pp. 26-27

[2] G.R. Nos. 93252 and 95245 were consolidated together with G.R. No. 93746, the latter petition being that of Mary Ann Artieda who had been similarly charged by respondent Secretary, and whose petition the Court of Appeals certified to this Court.

[3] The first three orders of preventive suspension are: first order dated 11 August 1988; second order dated 11 October 1988; third order dated 3 May 1990.

[4] Decision, p. 6

[5] In his motion dated 6 July 1991 filed with this Court, petitioner questioned the validity of the fourth order.

[6] Petitioner's memorandum filed on 15 October 1991

[7] Ibid.

[8] Petitioner's "Manifestation and compliance" dated 30 August 1991

[9] Respondents' Memorandum filed on 14 October 1991

[10] On 9 June to 26 June 1990 according to petitioner

[11] Public respondents' memorandum, *supra*.

[12] Public respondents' memorandum, *supra*., p. 7

[13] In his "Urgent Motion" filed on 9 September 1991, petitioner alleged that he again served the third order from 11 June 1990 up to 30 June 1990.

[14] Annexes "1" to "17" of respondent's memorandum filed on 14 October 1991 showed various memoranda, orders and other official papers and documents whose dates range from 6 June to 29 June 1990, which were acted upon and signed by petitioner as the City Mayor.

[15] This is computed by excluding the first day and including the last day in conformity with Article 13 of the Civil Code which states that in computing a period, the first day shall be excluded and the last day included.

[16] Issued by this Court on 26 June 1990

[17] Decision, p. 24

[18] Which shall take effect on 1 January 1992 unless otherwise provided herein, after its complete publication in at least one (1) newspaper of general circulation (Section 536 of the Code).

[19] TSN for the hearing held on 10 October 1991, pp. 11, 27, 35 and 36

[20] Rollo of G.R. No. 93252, p. 668 (petition docketed as CA-G.R. SP No. 25840, filed with the Court of Appeals on 30 August 1991).

In the main decision we stated that "amidst" the two successive suspension orders dated 11 August and 11 October 1988, Mayor Ganson instituted an action for prohibition against the respondent Secretary of Local Government (now Interior) in the Regional Trial Court of Iloilo City where he succeeded in obtaining a writ of preliminary injunction.

[21] Petitioner's urgent motion filed on 9 September 1991

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