

VICTOR C. MACALINCAG AND LORINDA M. CARLOS, PETITIONERS, VS. ROBERTO E. CHANG, RESPONDENT.

G.R. No. 96058. May 06, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari which seeks to annul and set aside the decision[1] of the Regional Trial Court (RTC) of Makati, Branch 132 dated October 24, 1990 in Civil Case No. 89-5633 entitled “Roberto E. Chang v. Victor C. Macalincag and Lorinda M. Carlos” which ordered herein petitioners or whoever are acting in their behalf to permanently desist from enforcing the order of preventive suspension dated October 6, 1989 against herein private respondent Roberto E. Chang.

The undisputed facts of the case are as follows:

On October 6, 1989, petitioner Lorinda M. Carlos (Carlos for short) signed a formal administrative charge approved by petitioner Victor C. Macalincag (Macalincag for short) for dishonesty, neglect of duty and acts prejudicial to the best interest of the service, committed as follows:

“1. That during the 45-day election ban period, before the January 18, 1988 local elections, you disbursed a total amount of P30,000.00 to Ms. Marissa Chan, Head of Department, in violation of Section 261 (v), (2), Article XXII of the Omnibus Election Code;

“2. That for the months of November and December 1987, you disbursed a total amount of P218,500, allegedly as financial assistance extended by the municipality to 437 bereaved families;

“3. That you disbursed the amount of P180,643.55 to cover expenses for merienda of municipal employees;

“4. That in violation of Sections 41 and 44 of PD 477 and Section 4(3) of PD 1445, you incurred cash overdrafts, amounting to P107,493,158.76 in the General Infrastructure and Trust Funds at the end of the year 1987;

“5. That on December 29, 1987, you transferred the amount of P1,977,492.00 from the Treasurer/Cashier’s safe to the Realty Tax Division’s safe, thus subjecting said municipal funds to possible loss; and

“6. That you continually failed to remit to the Bureau of Treasury the national collection which as of September 30, 1988 already amounted to P370,422,093.74.”

(Rollo, Annex “A”, pp. 38-39)

The basis of the formal charge by petitioner Carlos was the preliminary evaluation of the Commission on Audit (COA) Report dated January 18, 1989 and the affidavit-complaints of Councilor Roberto Brillante dated April 27, 1989 and May 23, 1989 (Rollo, Annex “D”, p. 43).

On the same date, October 5, 1989, petitioner Macalincag issued an Order of Preventive Suspension against Chang, which reads as follows:

“An administrative charge having been filed against you by this Department on the basis of the COA Audit Report dated January 18, 1989 and the sworn complaint of Councilor Roberto Brillante dated April 27, 1989 and May 23, 1989, respectively, for dishonesty, neglect of duty and acts prejudicial to the best interest of service, you are hereby ordered preventively suspended from Office effective upon receipt hereof pursuant to Section 41 of Presidential Decree No. 807.” (Underscoring supplied) (Rollo, Annex “B”, p. 40)

Also on October 6, 1989, petitioner Macalincag sent a letter to the “Governor, Metro Manila Commission – Attn: the Officer-in-Charge MMC Finance Office,” seeking the implementation of the Order of Preventive Suspension dated October 6, 1989 and recommending that an Officer-in-Charge be immediately designated from the ranks of qualified Municipal Treasurers and Assistant Municipal Treasurers in Metro Manila (Rollo, Annex “C”, p. 41).

By virtue of the said letter, the Officer-in-Charge, MMC Finance Office furnished respondent Chang, by ordinary mail, with a copy of the Order of Preventive Suspension also dated October 6, 1989 (Rollo, Petition, p. 15).

On November 10, 1989, respondent Chang filed a petition for prohibition with writ of preliminary injunction before the Regional Trial Court (RTC) of Makati against petitioners Macalincag and Carlos (Rollo, Annex “D”, pp. 42-46).

In an Order dated November 10, 1989, Executive Judge Santiago Ranada, Jr. set for hearing on 14, 16, and 20 November 1989 at 9:00 A.M. respondent’s application for the issuance of a writ of preliminary injunction. In said Order, the court also temporarily restrained Macalincag and Carlos, or their duly authorized representatives from implementing the questioned “Order of Preventive Suspension” dated October 6, 1989 for the preservation of the rights of the parties pending the final determination of the prayer for a writ of preliminary injunction (Rollo, Annex “E”, p. 48).

After submitting all the necessary pleadings, the court on January 19, 1990 issued an Order denying respondent’s Chang application for a writ of preliminary injunction, and sustained the power of the Secretary of Finance to issue the Order of Preventive Suspension dated October 6, 1989 (Rollo, Annex “K”, pp. 85-92).

A motion for reconsideration dated February 13, 1990 was filed by respondent Chang. In said motion, Chang raised a new argument by invoking Section 8 of the recently issued (January 9, 1990) Executive Order No. 392 entitled “Constituting the Metropolitan Manila Authority, providing for its powers and functions and for other purposes” (Rollo, Annex “L”, pp. 93-98).

On March 29, 1990, the trial court issued an Order reconsidering and setting aside its previous Order dated January 19, 1990 thus granting respondent Chang’s application for a writ of preliminary injunction (Rollo, Annex “M”, pp. 100-102).

On October 24, 1990, the trial court rendered its decision, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered ordering herein respondents, or whoever are acting in their behalf, to permanently desist from enforcing the Order of Preventive Suspension dated October 6, 1989 against herein petitioner.

No pronouncement as to costs.

SO ORDERED.” (Rollo, Annex “O”, p. 127)

Hence, this petition for review on certiorari.

The Second Division of this Court in its resolution dated February 11, 1991 denied the petition for having been filed out of time (Rollo, Resolution, p. 128) but the same was reinstated in a resolution dated April 15, 1991. (Rollo, Resolution, p. 141).

In the resolution dated July 10, 1991, the Second Division of this Court gave due course to the petition and required both parties to file their simultaneous memoranda (Rollo, Resolution, p.158).

The main issue in this case is whether or not the Secretary of Finance has jurisdiction to issue an Order of Preventive Suspension against the acting municipal treasurer of Makati, Metro Manila.

The petition is meritorious.

Petitioners contend that the Order of Preventive Suspension became effective upon receipt thereof by respondent Chang and not upon the designation of an officer-in-charge to replace him; that the Order of Preventive Suspension dated October 6, 1989 became effective before the issuance of Executive Order No. 392 and, therefore, can no longer be enjoined by reason of the alleged transfer of the power to suspend from the Secretary of Finance to the President of the Republic of the Philippines and that the power to suspend and remove municipal officials is not an incident of the power to appoint.

On the other hand, the contention of the private respondent is that a government officer is not suspended until someone has assumed the post and the officer subject of the suspension order has ceased performing his official function; that the implementation of the questioned suspension order was overtaken by the issuance of Executive Order No. 392 creating the Metropolitan Manila Authority and that the power to discipline is vested solely on the person who has the power to appoint.

It is very apparent from the records that respondent Chang was administratively charged on October 6, 1989 for dishonesty, neglect of duty and acts prejudicial to the best interest of the service. It was signed by Carlos, Executive Director, Bureau of Local Government and approved by Macalincag, Undersecretary of Finance, then acting Secretary. Simultaneous with the charge, Chang was preventively suspended which caused him to file a complaint for prohibition with preliminary injunction in the lower court.

In the questioned decision of the lower court, it was pointed out that in order that a preventive suspension will be implemented, there are two steps involved, viz: 1) service of a copy of said order on the respondent and 2) designation of his replacement. The trial court ruled that until an acting municipal treasurer is appointed to replace the respondent, the order of preventive suspension dated October 6, 1989 is incomplete and cannot be said to have taken effect.

This ruling of the trial court is untenable.

Preventive Suspension is governed by Sec. 41 of P.D. 807 or the Civil Service Law which provides:

“SEC. 41. Preventive Suspension. - The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.” (Underscoring supplied)

It will be noted that under the aforesaid law, designation of the replacement is not a requirement to give effect to the preventive suspension.

On the contrary, Batas Pambansa Blg. 337, otherwise known as the Local Government Code, provides in Section 156, Article 5, Chapter 3, Title II thereof for the automatic assumption of the assistant municipal treasurer or next in rank officer in case of suspension of the municipal treasurer, to wit:

“SEC. 156. TEMPORARY DISABILITY. - In the event of inability of the treasurer to discharge the duties of his office on account of a trip on official business, absence on leave, sickness, suspension, or other temporary

disability, the 'assistant municipal treasurer or, his absence, the treasury official next in rank in the municipality shall discharge the duties of the office subject to existing laws." (Underscoring supplied)

Specifically, it is provided under Section 233(2) of BP 337, that:

"Until otherwise provided by law, nothing in this code shall be understood to amend or repeal the pertinent provisions of PD No. 824 and BP 20, and all presidential decrees and issuances relevant to Metropolitan Manila and the Sangguniang Pampook of Regions IX and XII."

Accordingly, there appears to be no question that: the Order of Preventive Suspension of respondent Chang became effective upon his receipt thereof, which is presumed when he filed a complaint in the trial court preventing the implementation of such Order of Suspension. Otherwise stated, the designation of the OFFICER-IN-CHARGE to replace respondent Chang is immaterial to the effectivity of the latter's suspension. A contrary view would render nugatory the very purpose of preventive suspension.

Among others, Chang argued that Executive Order No. 392, which took effect on January 9, 1990, gave rise to the creation of the Metropolitan Manila Authority (MMA) and vested in the President of the Republic of the Philippines the power to appoint municipal treasurers in Metro Manila. As the power to suspend and remove a municipal official is an incident of the power to appoint, he maintained that it is the President who may suspend or remove him. (Rollo, pp. 155-156).

Relative thereto, Sec. 8 of Executive Order No. 392 provides:

"SEC. 8. All city and municipal treasurers, municipal assessors and their assistants as well as other officials whose appointment is currently vested upon the Metropolitan Manila Commission shall be appointed by the President of the Philippines, upon recommendation of the Council, subject to the Civil Service law, rules and regulations." (Underscoring supplied).

Earlier, prior to Executive Order No. 392, the power to appoint the aforesaid public officials was vested in the Provincial Treasurers and Assessors of the Municipalities concerned, under P.D. No. 477 and later transferred to the Commissioner of Finance under P.D. No. 921, but under both decrees, the power of appointment was made subject to Civil Service Laws and the approval of the Secretary of Finance.

Verily, the intention of the aforesaid legislations to follow the Civil Service Laws, Rules and Regulations is unmistakable.

Correspondingly, the power to discipline is specifically vested under Sec. 37 of P.D. No. 807 in heads of departments, agencies and instrumentalities, provinces and chartered cities who have original jurisdiction to investigate and decide on matters involving disciplinary action. Stated differently, they are the proper disciplining authority referred to in Sec. 41 of the same law.

The Office of the Municipal Treasurer is unquestionably under the Department of Finance as provided for in Sec. 3, P.D. No. 477. Hence, the Secretary of Finance is the proper disciplining authority to issue the preventive suspension order. More specifically acting Secretary of Finance, Macalincag, acted within his jurisdiction in issuing the aforesaid order.

By and large, even assuming that the power to appoint, includes the power to discipline as argued by Chang, acting Secretary Macalincag as Secretary of Finance is an alter ego of the President and therefore, it is within his authority, as an alter ego, to preventively suspend respondent Chang.

PREMISES CONSIDERED, the petition is GRANTED and the assailed Order dated October 24, 1990 is NULLIFIED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Penned by Judge Herminio I. Benito

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