

PRIMO PANTI, PETITIONER AND APPELLANT, VS. JUAN ALBERTO, RESPONDENT AND APPELLEE.*G. R. Nos. 13772-73. September 18, 1959*

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

During the early part of 1957, after an investigation conducted by an investigator of the Governor's Office of Catanduanes for certain complaints preferred against Mayor Primo Panti of Virac, his vice-mayor and councilors, the Provincial Governor, Juan Alberto, finding merit in the complaints, sent letters to the Provincial Board wherein he lodged formally certain charges of irregularities against said officials. The letter concerning Mayor Panti, dated September 4, 1957, states that during the construction of the Hicming-Dugui Road of which he was in charge, Mayor Panti "authorized laborers to sign payrolls covering the wages for fourteen (14) days when in fact and in truth said laborers actually worked only for three (3) days, and after said laborers had collected the amount of Fifty-six Pesos (P56.00) each representing 14 days, said Mayor Panti collected from the laborers concerned the P56.00 from each laborer and returned only the amount of P12.00 corresponding to his wages for three (3) days." Copy of this letter was served upon Mayor Panti. On September 5, 1957, Gov. Alberto notified Mayor Panti of his suspension effective on said date. The hearing was set on September 12, 1957, of which Mayor Panti was also notified.

On September 11, 1957, Mayor Panti wrote the Provincial Board requesting for a copy of the complaint and asking for the postponement of the hearing. The request was denied, but the Board was not able to hear the case because Mayor Panti was not present. So the hearing was postponed to September 25, 1957. On September 23, the Provincial Board received a letter from Mayor Panti's counsel requesting for postponement. No action was taken on the request but the Provincial Board could not again hear the case because of the absence of Mayor Panti and his counsel. The hearing was reset for September 30, 1957 of which Mayor Panti was notified. On said date the Provincial Board was again unable to hear the case because Mayor Panti and his counsel did not appear for which reason the hearing had to be postponed to October 11, 1957; but on October 7, 1957, Mayor Panti and his co-respondents filed with the Court of First Instance of Catanduanes two separate petitions, one for certiorari with preliminary injunction and another for mandamus, disputing the legality of their suspension and praying for their reinstatement.

On October 11, 1957, date set for the hearing of the administrative charges, the Provincial Board convened and at the hearing Mayor Panti and his co-respondents appeared for the first time with their counsel, but on that occasion they raised for the first time the issue that said Board has no jurisdiction to try the case because the charges bear no relation with their official duties. As this issue was resolved adversely, respondents moved for postponement, but the motion was denied and the Provincial Board ordered the fiscal to present his evidence. After the hearing, the Provincial Board rendered decision finding the charges substantiated and recommending the dismissal of the suspended officials. Thereafter, the record of the case was forwarded to the Executive Secretary for final action.

In the meantime, the two cases filed before the Court of First Instance of Catanduanes were consolidated and tried

together because of the interrelation existing between them, and on March 28, 1958 the court rendered decision dismissing the case insofar as Mayor Panti is concerned for lack of merit, but finding with regard to the other respondents that the Governor exceeded his authority in ordering their suspension. The court, therefore, ordered their reinstatement. No award was made as to costs. From this decision Mayor Panti has appealed.

The issues raised in this appeal as may be inferred from the several assignments of errors of appellant may be boiled down into two, namely: (1) the charges preferred against appellant have no direct relation to his functions as public officer for which he can be suspended or removed from office; (2) his suspension is illegal because it is beyond the 30-day period authorized by law.

The first contention cannot be entertained. It appears from the complaint filed by Gov. Alberto that during the construction of a municipal road of which he was in charge, appellant, in his capacity as mayor, authorized several laborers to sign payrolls covering their wages for 14 days when in fact they actually worked only for 3 days having pocketed the money which represents the difference in their pay. And this charge has been duly substantiated by sufficient evidence.

Thus, the District Engineer of Catanduanes stated that the Hicming-Dugui Road construction is a municipal project the undertaking of which comes under the supervision of the Mayor of Virac who was appellant herein. And the documentary evidence presented by the fiscal even over the objection of appellant's counsel shows that the padded payrolls used to collect the overcharge bear the signature of Mayor Panti. The presentation of these payrolls is, therefore, proper for precisely they are the payrolls that had direct relation to the irregularities allegedly committed by appellant. And after considering the whole evidence presented by the fiscal, the trial court made the following findings: the sum of P20,000.00 was released from the contingent fund of the President for the construction of said project; that, according to such release, the disposition of said fund shall be made by the Municipal Council of Virac; that, upon prior arrangement with the District Engineer of Catanduanes, the mayor was given the supervision of the construction of the project; that such supervision carried with it the employment of laborers by the mayor who in fact employed the laborers in said project; and that appellant signed the payrolls for the project in his capacity as mayor. These facts show that the alleged irregularities were committed by appellant in connection with the performance of his official duties, which justify his suspension on the part of Gov. Alberto. The latter, therefore, did not act with abuse of authority.

The next issue is whether his preventive suspension is within the 30-day period authorized by law. The law governing the suspension of municipal officials is Section 2189 of the Revised Administrative Code which provides:

"The preventive suspension of a municipal officer shall not be for more than thirty days. At the expiration of the thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension."

It is clear that the preventive suspension shall only be for 30 days. At the end of this period the suspended official shall be reinstated in office without prejudice to the continuation of the proceedings against him unless the delay is due to his fault, negligence, or request, in which case the time of the delay should not be counted in computing the time of suspension. Here the first hearing was held on September 12, 1957 but because of appellant's request for postponement and his failure to appear the hearing was postponed to September 25, 1957. Because of his absence, the hearing had to be postponed again to September 30, 1957, but as appellant did not appear as usual so the Provincial Board reset the hearing on October 11, 1957. On this date appellant refused to recognize the jurisdiction of the Board and so the hearing had to be held ex parte until October 15, 1957. On October 21, 1957,

the Board rendered its decision finding appellant guilty as charged. Then the record was forwarded to the Executive Secretary for final action.

It is apparent that the hearing has suffered several interruptions due to the requests for postponement of appellant or to his absence, and that in spite of such delay, the Provincial Board kept on resetting the hearing until it finally acted on the case on October 11, 1957. And on October 21, 1957, the decision was rendered. If we were to deduct from the whole period that transpired from the first day of the hearing set on September 12, 1957 to October 21, 1957, date of the decision, the period consumed by the several interruptions which can only be attributed to appellant, the result would be that only seventeen (17) days had elapsed of the 30-day limit fixed by law. It would therefore appear that when these two cases were filed by appellant, his suspension was still within the limit of the law and hence it cannot be pretended that Gov. Alberto has acted arbitrarily on the matter. We find therefore no merit in this claim of appellant.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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