

**ALEJANDRO FACUNDO, PETITIONER, VS. HON. JAVIER PABALAN,
JUDGE, SIXTH BRANCH. COURT OF FIRST INSTANCE OF
PANGASINAN, LEONARDO CARBONELL AND VICENTE PEREZ,
RESPONDENTS.**

G.R. Nos. 17746 and 17807. January 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

On July 13, 1960, Valeriano Ulep and Alejandro Facundo jointly filed with the Court of First Instance of Pangasinan a petition for mandamus (docketed as Special Civil Case No. T-669) against respondents Leonardo Carbonell (municipal mayor of Asingan, Pangasinan), Tiburcio Layos, Federico Domingo, Roberto Lopez, Mariano de los Trinos, Bartolome Cruz (municipal councilors of Asingan), and Vicente Perez (municipal treasurer) alleging, as first cause of action, that on February 11, 1948, petitioner Ulep was appointed Local Civil Registry Clerk in the office of the municipal treasurer of Asingan, and has held said position and received salary therefor, continuously since his appointment; that because he is a non-civil service eligible, he (Ulep) took the general clerical (qualifying) civil service examination on February 27, 1960, pursuant to the provisions of Republic Act No. 2260, known as the Civil Service Act of 1959; that on June 24, 1960, respondents municipal councilors passed Resolution No. 67, abolishing his position and, on the same day, approved Resolution No. 70, creating 4 positions of policemen; and that four days later, respondent Mayor Carbonell wrote a letter to him (Ulep) terminating his services as Local Civil Registry clerk.

As second cause of action, the petition alleged that the other petitioner Facundo, a third grade civil service eligible, was appointed as Market Collector in the office of the municipal treasurer of Asingan, on October 15, 1958, and has continuously held and performed the duties of said position and received the emoluments therefor since his appointment; that in said Resolution No. 67, his position was abolished; and that on June 28, 1960, respondent mayor Carbonell wrote him a letter terminating his services as Market Collector.

The petition further alleged that by the approval and adoption of said resolution and the termination of their services, petitioners have been unlawfully excluded from their positions; that in approving and adopting said resolution and in terminating their services, respondents were impelled by revenge and ulterior motives; that respondents' acts are oppressive, persecutory, and violative of the specific provisions of the cited Republic Act No. 2260; and that due to respondents' acts, petitioners each suffered moral damages in the sum of P5,000.00 and exemplary damages in the sum of P5,000.00, and expended attorney's fees in the sum of P2,000.00. Petitioners, therefore, prayed that a preliminary mandatory order^[1] be issued directing respondent mayor Carbonell to reinstate them to their positions; and that judgment be rendered declaring respondents to have acted illegally in passing said resolution, and in terminating petitioner's services, declaring void said resolution for being oppressive, persecutory, and violative of the provisions of Republic Act No. 2260; that respondents municipal mayor and municipal councilors be declared to have acted in bad faith and, therefore, sentenced to pay to each of petitioners, jointly and severally, the sums of P5,000.00 as moral damages, P5,000.00 as exemplary damages, and

P2,000.00 as attorney's fees.

To this petition, respondents timely filed their answer alleging, among others, that the positions abolished under the resolution in question "were unnecessary and useless and carrying duties which could be efficiently performed by other employees in the office of the Municipal Treasurer"; that the appropriation for said positions, "could be applied for more important and useful undertakings of the municipality, particularly, in the implementation and pursuance of its inherent duty, which is the present administration's avowed policy of maintaining peace and order which have been unduly neglected in the past"; and that said resolution "is valid and lawful, enacted and resolved with a view of bringing about a better and more efficient administration and in consonance with the promise and avowed policy of the present administration of maintaining peace and order" for which it received the confidence of the people of Asingan in the last local elections. Respondents prayed that the petition be dismissed with costs.

Issues having been joined, the case was heard and, on September 28, 1960, the court rendered a decision, which reads:

"DECISION

"Alejandro A. Facundo, a civil service eligible, was appointed on October 15, 1958 by Mayor Jose R. Ramos (belonging to the Liberal Party) as 'Market Collector' in the office of the municipal treasurer of Asingan, Pangasinan; the appointment was recommended by municipal treasurer Estrada, approved by the provincial treasurer, and attested and authorized by the Commissioner of Civil Service, and it was also approved by the Secretary of Finance.

"Valeriano C. Ulep, with no civil service eligibility, has been in the office of the municipal treasurer of Asingan, Pangasinan, as local civil registry clerk since 1948; his last appointment—promotion—is dated December 4, 1957, given by Mayor Jose R. Ramos, though recommended by the municipal treasurer and approved by the provincial treasurer carried, however, the following notation: 'Authorized under Section 682 of the Revised Administrative Code'.

"In the last election of November, 1959, the following were successfully voted in Asingan, Pangasinan:
Municipal Mayor—Leonardo Carbonell (Nacionalista)
Municipal Vice-Mayor— Querubin Rasiles (Liberal)
Municipal Councilor—Tiburcio Layos (Nacionalista)
Municipal Councilor—Federico Domingo (Nacionalista)
Municipal Councilor—Roberto Lopez (Nacionalista)
Municipal Councilor—Mariano de los Trinos (Nacionalista)
Municipal Councilor—Bartolome Cruz (Nacionalista)
Municipal Councilor—Tranquilino Calimlim (Liberal)
Municipal Councilor—Emiliano Diosay (Liberal)
Municipal Councilor—Remigio Obra (Liberal)

"On June 24, 1960, in a special session of the municipal Council of Asingan, Pangasinan, attended by all, except Vice-Mayor Rasiles, councilors Obra and Diosay (all Liberals), Resolution No. 67, was duly passed, though with the dissenting voice of councilor Calimlim (Liberal). Said Resolution provides, in its pertinent parts:

'Whereas, it is observed that in the Office of the Municipal Treasurer in this municipality, there is an excess of personnel therein;

'Whereas, in order to solve the excess of personnel in the said office, it is necessary that two of the present positions therein shall be abolished;

'Whereas, the position of Mr. Valeriano Ulep as Local Civil Registry Clerk is one which can also be undertaken by the Internal Revenue Clerk of the Municipal Treasurer's Office in this municipality;

'Whereas, even the position of Mr. Alejandro Facundo as market collector ought to be abolished in view of the fact that there are other personnel in the office of the municipal treasurer's who hold the same position as market collectors;

'Whereas, if these two positions will be abolished, the remaining positions in said office of the municipal treasurer in this municipality will be sufficient to warrant the sound operation of said office;

'NOW THEREFORE:

'On motion of Councilor Federico Domingo himself, seconded., by councilor Bartolome Cruz, it was:

'RESOLVED, as it is hereby resolved, that the position of Mr. Valeriano Ulep as Local Civil Registry Clerk and that of Mr. Alejandro Facundo as market collector in the office of Municipal Treasurer in this municipality shall be abolished; effective July 1, 1960.

'BE IT FURTHER RESOLVED, that a copy of this resolution shall be forwarded to the Municipal Treasurer, Mr. Vicente Perez; the Local Civil Registry Clerk Mr. Valeriano Ulep; and the Market collector Mr. Alejandro Facundo; all of this municipality for their information and guidance.

'CARRIED :

Date approved: June 24, 1960.

Mr. TRANQUILINO CALIMLIM
(Dissenting)

"Obviously, with the savings done by the Municipal Council, they then passed Resolution No. 70, creating in the Police Department of Asingan, Pangasinan, the positions of Sergeant of Police (P75.00 monthly), Corporal of Police (P70.00 monthly), and four Policemen (P60.00 monthly each) ; all said positions to become effective on July 1, 1960. Councilor Calimlim (Liberal; dissented too from this Resolution No. 70.)

"Ulep and Facundo have come now to this Court seeking relief from said Resolution No. 67 abolishing their positions; they also ask for damages, attorney's fees and costs; there was also asked that a preliminary mandatory order for reinstatement be immediately issued during the pendency of this case, but this was not granted, and instead immediate hearing was had on August 31, 1960, and after a brief reception of evidence, submission of memoranda, the case was submitted for decision.

"The Court shall take first the qualifications and nature of appointment of each of the petitioners.

"Alejandro A. Facundo is a Third Grade Civil Service eligible, having passed the examination of Junior Teacher equivalent to Third Grade on December 29, 1955, with a rating of 70.2% (according to a certificate of the previous municipal treasurer of Asingan). While it is true that the appointment of Alejandro A. Facundo is 'probational', yet it appears authorized and approved by the Provincial Treasurer, the Secretary of Finance, and the Commissioner of Civil Service. Petitioner Facundo is entitled to permanency in his tenure as market collector; he cannot be removed except for cause as provided by law; and his summary dismissal—by indirect abolition of his position—not being approved nor sanctioned by the Commissioner of Civil Service or the Secretary of Finance has no validity in law. The ruling of the Supreme Court in the case of Briones vs. Osmeña, 104 Phil., 588; 55 Off. Gaz. [11] 1920, is squarely applicable.

"However, in the case of petitioner Valeriano Ulep, the facts are different. Ulep is not a civil service eligible; his different appointments had always been subject to Section 682 of the Revised Administrative Code, and this was known to petitioner himself. Ulep said that he took the civil service examination in 1960, but the results were not

announced even when this case was heard (August 31, 1960). Ulep, therefore, cannot claim the permanency and protection of civil service law and rules. * * *

"In the case of Mariano Quitiquit vs. Salvador Villacorta, 107 Phil., 1060, 58 Off. Gaz. [10] 1967, it was said:

"The appointment of appellant being temporary in character, the same can be terminated at pleasure by the appointing power.'

"In the case of Felipe Hortillosa vs. Rodolfo Ganzon, 105 Phil., 105; 56 Off. Gaz. [14] 5292, the Supreme Court said, in part:

'Under Sec. 682 of the Revised Administrative Code, temporary appointment shall continue only for a period not exceeding three months, and a temporary appointee may be replaced by an eligible at any time.'

"Valeriano Ulep, therefore, cannot in this case claim any right to reinstatement.

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered as follows:

"(a) Resolution No. 67 of the Municipal Council of Asingan, Pangasinan, in so far as it abolished the position of Valeriano Ulep— not a civil service eligible—as local civil registry clerk, is valid and enforceable.

"(b) Resolution No. 67 of the Municipal Council of Asingan, Pangasinan, in so far as it abolished the position of Alejandro Facundo— a civil service eligible—as market collector in the office of the municipal treasurer of Asingan, there being even no recommendation of the latter for such abolition, and it being a removal of Alejandro Facundo without cause, is hereby declared illegal and invalid.

"Accordingly, respondents are hereby ordered and directed to reinstate Alejandro Facundo in his permanent position as market collector in the office of the municipal treasurer of Asingan, Pangasinan.

"Petitioner Alejandro Facundo is hereby declared entitled to collect his emoluments and salaries from July 1, 1960 until finally reinstated.

"No damages are awarded.

"No pronouncement is made regarding costs.

"So Ordered."

From this decision, Ulep appealed to this Court (docketed as G. R. No. L-17807), while Facundo did not. Against the judgment in favor of Facundo, respondents sought to appeal, but since the appeal was filed outside the reglementary period, the same was disallowed by the trial court. From this order of disallowance, the respondents did not appeal. The decision having become final and executory insofar as Facundo was concerned, the latter, on October 28, 1960, filed a motion for execution, which was opposed by respondents. On November 3, 1960, respondent Judge Javier Pabalan issued an order denying said motion for execution, which reads in part:

"There is no question that Valeriano Ulep has lost his case. He has appealed to the Supreme Court (L-17807) for review; and the appeal has been allowed and admitted. However, the same counsel (for petitioner Facundo) realizing that Alejandro Facundo won this case, has moved now insistently that the decision, insofar as it is in favor of Facundo, be executed immediately, because said decision has become final and executory (see Section 1, Rule 41 of the Rules of Court). Counsel for Facundo also argued that the period within which to appeal has already expired, and there is no valid pleading admitted by this Court for review of the decision insofar as the case of Facundo is concerned. Said counsel argues that the writ of execution is mandatory under the Rules of Court.

"This Court takes the view that the decision given on September 28, 1960, is for both Ulep and Facundo, and that the issue debated in this case is the validity of Resolution 67 of the Municipal Council of Asingan, which is a single indivisible proposition; considering that Ulep who lost his case before this Court, is now asking for review before the Supreme Court of the decision rendered and the consequent validity of Resolution 67; considering that the Supreme Court may rule as to whether Resolution 67 valid or invalid in its entirety on or in its different parts; considering that Facundo, who won before this Court, if finally ordered entitled to his position, shall receive all the emoluments and salaries from July 1, 1960 when he was ousted until finally reinstated, and that, therefore, he shall receive all his back salaries and compensation; considering that the counsel for petitioner may immediately ask for a review of this particular ruling by the Supreme Court; considering that the entire records of this case shall be immediately sent to the Supreme Court for proper review of the whole decision of September 28, 1960. In deference to any possible ruling of the Supreme Court;

* * *

"It is hereby ordered that the motion for immediate partial execution of the decision of September 28, 1960 be, at it is hereby denied.

"Let the record of this case be immediately forwarded to the Supreme Court for proper review of the said decision.

"So ordered."

From this order, Facundo filed with us the present petition for certiorari with mandamus (G. R. No. L-17746) alleging that respondent Judge "gravely abused his discretion and unlawfully neglected the performance of an act which is specifically enjoined upon him as a duty by Section 1, Rule 39, Rules of Court".

G. R. No. L-17746:

Facundo's petition for certiorari with mandamus is meritorious. The records disclose that respondents' appeal was filed out of time and was disallowed by the trial court in its order of November 3, 1960 (p. 78, Record, in L-17807). Consequently, the decision in favor of petitioner Facundo became final and executory (Sec. 1, Rule 39, Rules of Court), and he (Facundo) became entitled, as a matter of right, to its execution (*Fiesta vs. Llorente*, 25 Phil. 554; *Lim vs. Singian*, 37 Phil. 817; *Ebero vs. Cañizares*, 79 Phil. 152). It, therefore, became respondent Judge's ministerial duty, compellable by mandamus, to issue the writ of execution sought by Facundo (*Buenaventura vs. Garcia*, 78 Phil. 759; *Zulueta vs. Paredes*, 63 Phil. 1; *Philippine Trust Co. vs. Santamaria*, 53 Phil. 463; *Manansala vs. Narvasa*, G. R. No. L-10223, prom. August 29, 1957; *De los Angeles vs. Victbriano*, 109 Phil., 12).

The fact that there is only one decision and only one resolution involved, does not make the right of one of the petitioners dependent upon the right of the other. The provisions of Resolution No. 67 are severable, each petitioner occupying a different position and having different qualifications, Facundo being a civil service eligible and Ulep, not. The decision, too, although only one, contains separate findings for each of the parties and makes distinct and independent rulings for each of them. The appeal, therefore, of Ulep which has no bearing to the ordered reinstatement of Facundo cannot be an obstacle to the execution of said decision insofar as Facundo is concerned.

G. R. No. L-17807:

The issues to be resolved in the appeal of Valeriano Ulep are: (1) whether the municipal council of Asingan, Pangasinan validly abolished the position of petitioner-appellant Ulep; and (2) in the affirmative, whether the abolition thereof resulted in the lawful separation of said appellant.

With respect to the first issue, there is no law which expressly authorizes a municipal council to abolish the

positions it has created, but the rule is well-settled that the power to create an office includes the power to abolish it, unless there are constitutional or statutory rules expressly or impliedly providing otherwise (*Castillo vs. Pajo*, et al., (103 Phil., 515; 54 Off. Gaz., [27] 6738), citing *Brillo vs. Enage*, 94 Phil., 732; 50 Off. Gaz., 3102 and 67 C.J.S. 121). However, the office must be abolished in good faith; and if immediately after the office is abolished, another office is created with substantially the same duties, and a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will intervene (*Gacho, et al. vs. Osmena, et al.*, 103 Phil., 837; 55 Off. Gaz., [48] 10079, citing 37 Am. Jur. 858).

In the instant case, the reasons which impelled the municipal council of Asingan in adopting Resolution No. 67, dated June 24, 1960, abolishing the position of appellant are stated therein, to wit: there is "an excess of personnel" in the office of the municipal treasurer of Asingan; the position of appellant "could be undertaken by the internal revenue clerk" in said office; and if abolished, the remaining positions in said office "will be sufficient to warrant the sound operation of said office". In respondents' answer, it is also stated that the appropriation of said position "could be applied for more important and useful undertakings of the municipality, particularly, in the implementation and pursuance of its inherent duty, which is the present administration's avowed policy of maintaining peace and order, which have been unduly neglected in the past." Observe too, that the new positions created (in Resolution No. 70 of the same date as No. 67), are those of policemen, the duties of which, are entirely different from those of appellant. In the circumstances, we are not prepared to declare that the action of the municipal council of Asingan was an abuse of the power and discretion lodged in it by existing law (*Rodriguez vs. Montinola*, 94 Phil., 964; 50 Off. Gaz., [10] 4820).

As to the second issue, appellant contends that his removal from his position was illegal because having taken the civil service examination required under Section 23[2] of Republic Act No. 2260, known as the Civil Service Act of 1959, he could not be replaced or removed from office, unless the results of said examination shows he failed therein. He also argues that his removal was illegal, as it was not for cause as provided by Section 4, Article XI of the Constitution. But, appellant can not successfully invoke said provisions in his favor, because there has been no removal of petitioner, but an abolition of his position, which was within the power of the municipal council of Asingan to do (*Manalang vs. Quitoriano, et al.*, 94 Phil., 903; 50 Off. Gaz., [6] 2515; *Dominguez, et al. vs. Pascual, et al.*, 101 Phil., 31; *Rodriguez, et al. vs. Montinola, and Castillo vs. Pajo, et al.*, both supra.)

CONCLUSIONS

In L-17746: Wherefore, the order of the trial court dated November 3, 1960 denying execution of its decision of September 28, 1960, is hereby set aside. It appearing that petitioner Facundo was, during the pendency of the present petition (or on June 20, 1961), reinstated to his position of Market Collector to which he is entitled, the petition may be deemed moot as to his prayer for reinstatement. The writ, however, is still proper and should issue, as to petitioner's prayer for payment of his back salaries (from July 1, 1960 to June 19, 1961), and the trial Judge is directed to immediately issue a writ of execution of its decision of September 28, 1960. No costs.

In L-17807: Premises considered, the decision (dated September 28, 1960) of the trial Judge appealed from, is hereby affirmed, with costs against the petitioner-appellant. So ordered.

Bautista Angela, Labrador, Conception, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

Order set aside in L-17746; judgment affirmed in L-17807.

[1] This was denied by the respondent Judge.

[2] "SEC. 23. Recruitment and selection of Employees— * * * non-eligible employees who, upon approval of this Act, have rendered five years or more of continuous and satisfactory service in classified positions and who met the other qualifications for appointment to their positions, shall within one year from the approval of this Act, be given qualifying examinations in which their length of satisfactory service shall be accorded preferred consideration: Provided, further, That those who fail in those examinations as well as those who fail or refuse to take the examination when offered shall be replaced by eligibles * * *."

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