

just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. In the case at bar, plaintiff is not entitled to moral damages because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it.

Numeriano G. Estenzo for plaintiff and appellant.

City Fiscal Jose L. Abad and First Assistant City Fiscal Honorato Garciano for defendant and appellee.

DECISION

PADILLA, J.:

An action was brought to recover moral damages in the sum of P10,000 and P2,500 for attorney's fees and costs. For cause of action the plaintiff alleges that the defendant, in his capacity as City Assessor of Cebu, wrote and mailed to him a letter by which he was informed that he was delinquent in the payment of realty tax from 1947 to 1951 on a parcel of land assessed at P1,800, amounting to P98.45 including penalties, and that unless the same be paid on 9 May 1952 the real property would be advertised for sale to satisfy the tax and penalty due and expenses of the auction sale; that the letter caused him mental anguish, fright, serious anxiety, moral shock and social humiliation; besmirched his reputation; wounded his feelings, all of which the plaintiff fairly estimates to be P10,000. A motion to dismiss the complaint on the ground that it does not state a cause of action was granted. A motion for reconsideration of the order of dismissal was denied. Hence this appeal.

Laying aside the other unimportant point as to whether the letter was addressed to Tomas Bacalay and not to the plaintiff surnamed Bagalay and granting that it was addressed and mailed to the latter, still the facts pleaded in the complaint, admitting them to be true, do not entitle him to recover the amount of moral damages he claims to have suffered as a result of the writing and mailing of the letter by the defendant in his official capacity and receipt thereof by the plaintiff because the former has done nothing more than to write and mail the letter. There is no allegation in the complaint that the amount due for the realty tax and penalty referred to in the defendant's letter complained of had been paid by the plaintiff. Article 27 of the Civil Code which authorizes the filing of an action for damages, relied upon by the plaintiff, contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. The provisions of the article invoked by the plaintiff do not lend support to his claim and contention, because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it. All the moral damages the plaintiff claims he has suffered are but the product of oversensitiveness.

The order appealed from is affirmed, with costs against the plaintiff.

Paras, Pablo, Bengzon, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion and J. B. L. Reyes, J.J., concur.

VI

Pio S. Palamine, Sulpicio Udarbe, Alfonso Sagado, Hipolito Exclise, Ireneo Sulita, Melecio Damasiny, and Ludhero Baloc, Petitioners, vs. Rodrigo Zagado, Metrano Palamine, Brigido Canales, Dominador Acodo, Gualberto Saforteza, Respondents, G. R. No. L-6901, March 5, 1954, Bengzon, J.

ADMINISTRATIVE LAW; REMOVAL OR DISMISSAL OF CHIEF AND MEMBERS OF POLICE FORCE OF A MUNICIPALITY. — The chief and members of the police force of a municipality cannot be dismissed simply in accordance "with the new policy of the present administration," without charging and proving any of the legal causes specifically provided in Republic Act 557.

Tañada, Pelaez & Teehankee for petitioners.

Provincial Fiscal Pedro D. Melendez for respondents.

BENGZON, J.:

The petitioners were on June 12, 1953, the chief and members of the police force of Salay, Misamis Oriental. On that date they were removed from the service by the respondent Rodrigo Zagado as the acting mayor of the same municipality. The other respondents are the persons subsequently appointed to the positions thus vacated.

This litigation was instituted without unnecessary delay, to test the validity of such removals and appointments, the petitioners contending they were illegal, because contrary to the provisions of section 1, Republic Act No. 557, which reads in part as follows:

"Members of the provincial guards, city police and municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, x x x"

There is no question that on June 12, 1953 each of the petitioners received from the respondent Rodrigo Zagado a letter of dismissal couched in these terms:

"I have the honor to inform you that according to the new policy of the present administration, your services as Municipal Police, this municipality will terminate at the opening of the office hour in the morning of June 13, 1953, and in view hereof, you are hereby respectfully advised to tender your resignation effective immediately upon receipt of this letter."

There is also no question that on June 14, 1953 said respondent appointed the other respondents to the vacant positions, which the latter assumed in due course and presently occupy.

The respondents' answer, without denying the letters of dismissal, alleges that Acting Mayor Zagado had dismissed the petitioners "with legal cause and justification" and that "charges have been preferred against the said petitioners".

What that legal cause is, the pleading does not disclose. What the preferred charges were, we do not know. Whether they are charges of the kind that justify investigation and dismissal, respondents do not say. And when the controversy came up for hearing, none appeared for respondents to enlighten the court on such charges or the outcome thereof.

Hence, as the record now stands, the petitioners appear to have been dismissed simply in accordance "with the new policy of the present administration" as avowed in the letters of dismissal. Probably that is the "legal cause" alleged by respondents. But they forget and disregard Republic Act 557, inasmuch as no misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularity in the performance of duty or violation of law has been charged and proven against the petitioners. The Legislature in said statute has wisely expressed its desire that membership in the police force shall not be forfeited thru changes of administration, or fluctuations of "policy", or causes other than those it has specifically mentioned.

Reinstatement is clearly in order¹.

Wherefore, judgment is hereby rendered in favor of the petitioners, commanding the respondent Acting Mayor Rodrigo Zagado to reinstate them to their respective positions, and ordering the other respondents to vacate their places. Costs against respondents. So ordered.

Paras, C.J., Pablo, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Diokno, J.J., concur.

Petitioners reinstated.

¹ Mission et al vs. Del Rosario, G. R. No. L-6754, Feb. 26, 1954; Manuel vs. De la Fuente, 48 Of. Gaz., 4829.