

that they are subject to the power of the legislature to abolish them.

Principias, Abad, Mencias & Castillo for appellant. First Asst. Sol. Gen. Ruperto Kuyunan Jr. & Sol. Jesus A. Avanceña for appellee.

DECISION

TAUZON, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan dismissing, for lack of merit, an application for mandamus and quo warrantum with a demand for back pay and/or damages.

The cause was submitted upon the pleadings and an agreed statement of facts, the relative portions of which are condensed below.

The plaintiff was a duly appointed and qualified pre-war toll collector in the office of the provincial treasurer of Pangasinan with station at the Bued toll bridge in Sison, Pangasinan. His appointment was classified by the Commissioner of Civil Service as permanent. On October 18, 1945, after liberation, he was reappointed to that position with compensation at the rate of ₱720.00 per annum. On March 21, 1946, he resigned but on April 16 he was reappointed, and had continuously served up to November of 1947, when the bridge was destroyed by flood, by reason of which, he and two other toll collectors were laid off. Previously, from July to September 10, 1946, the bridge had been temporarily closed to traffic due to minor repairs and during that period he and his fellow toll collectors had not been paid salaries because they had not rendered any service, but upon the reopening of the bridge to traffic after the repairs, he and his companions resumed work without new appointments and continued working until the bridge was washed away by flood in 1947.

When the bridge was reconstructed and reopened to traffic about the end of November, 1950, the plaintiff notified the respondent Provincial Treasurer of his intention and readiness to resume his duties as toll collector but said respondent refused to reinstate or reappoint him. Respondent Alfredo Murao, also a civil service eligible, was appointed instead of him in February, 1951, and has been discharging the duties of the position ever since. The position now carries a salary of ₱1,440.00 a year.

The Bued toll bridge is a portion of a national road and is a national toll bridge under Act No. 3932. The salaries of toll collectors thereon are paid from toll collections. In 1948, 1949 and 1950, no appropriation was set aside for these salaries, when the bridge was being rehabilitated. On September 15, 1950, the board on toll bridges approved the Bued river bridge as a toll bridge, authorized the collection of fees thereon, and prescribed corresponding rules and regulations.

Main ground for denial of the petition by the lower court is that the position in dispute is temporary and its functions transitory and precarious. The Solicitor General in this instance simplifies the issue by confining the point of discussion to whether or not by the total destruction of the bridge in 1947 the position of toll collectors provided therefor were abolished. He opines that they were.

We agree with the Solicitor General's approach of the case but are constrained to disagree with his conclusions. To consider an office abolished there must have been an intention to do away with it wholly and permanently, as the word "abolish" denotes. Here there was never any thought, avowed or apparent, of not rebuilding the aforementioned bridge. Rather the contrary was taken for granted, so indispensable was that bridge to span vital highways in northern Luzon and to Baguio.

This being so, the collapse of said bridge did not, in our opinion, work to destroy but only to suspend the plaintiff's position, and that upon the bridge's rehabilitation and its reoperation as a toll bridge, his right to the position was similarly and automatically restored.

This position is temporary, transitory or precarious only in the sense that its life is co-extensive with that of the bridge as a toll bridge. For that matter, all offices created by statute are more or less temporary, transitory or precarious in that they are subject to the power of the legislature to abolish them. But this is not saying that the rights of the incumbents of such positions may be impaired while the offices exist, except for cause.

The fact that the destruction of the bridge in question was total and not partial as in 1945, the length of time it took to reconstruct it, and the hypothetical supposition that the new structure could have been built across another part of the river, are mere matters of detail and do not alter the proposition that the positions of toll collector were not eliminated. We believe that the cases of pre-war officers and employees whose employments were not considered forfeited notwithstanding the Japanese invasion and occupation of the Philippines and who were allowed to recuopy them after liberation without the formality of new appointments are pertinent authority for the views here expressed. Some of such cases came up before this Court and we specially refer to *Abaya v. Alvear*, G. R. No. L-1793, *Garces v. Bello*, G. R. No. L-1363, and *Tavora v. Gavina et al.*, G. R. No. L-1257.

Our judgment then is that the appellant should be reinstated to the position he held before the destruction of the Bued river bridge.

The claim for back salary and/or damages may not be granted, however. Without deciding the merit of this claim, it is our opinion that the respondent Provincial Treasurer is not personally liable therefor nor is he authorized to pay it out of public funds without proper authorization by the Provincial Board, which is not a party to the suit.

The decision of the trial court is reversed in so far as it denies the petitioner's reinstatement, which is hereby decreed, and affirmed with respect to the suit for back salary and damages, without special finding as to costs.

Paras, Pablo, Benzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, J. J., concur.

IV

Lucia Javier, Petitioner vs. J. Antonio Araneta et al., Respondents, G. R. No. L-4369, August 31, 1953.

CIVIL PROCEDURE; CLAIM FOR DAMAGES AFTER CASE HAD BEEN DECIDED BY SUPREME COURT; DEATH OF DEFENDANT. —While the trial court was in the process of receiving evidence on damages incident to the issuance of the writ of preliminary injunction, J the defendant, died and because of this event the trial court entertained the view that the claim for damages should be denied because the claim should be filed against the estate of the deceased. HELD: The finding of the trial court that the claim for damages of respondents should be denied because of the death of the deceased and that the claim should be filed against the estate of the latter is not well taken. This result only obtains if the claim is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, (Rule 3, Section 21, Rules of Court), but not when the claim is for damages for an injury to person or property, (Rule 88, Section 1 idem). In the present proceeding, the claim for damages had arisen, not while the action was pending in the Court of First Instance, but after the case had been decided by the Supreme Court. Moreover, the claim of respondent is not merely for money or debt but for damages to said respondent.

Alberto de Joya for petitioner, Araneta and Arancia for respondent.

RESOLUTION

BAUTISTA ANGELO, J.:

On October 30, 1951, this Court dismissed the petition for certiorari interposed by Lucia Javier and dissolved the preliminary injunction issued as prayed for in said petition. Before this decision has become final, a petition was filed in this Court praying that the damages suffered by respondent resulting from the issuance of the writ be assessed either by the Supreme Court or by the court of origin. On November 21, 1951, acting favorably on said petition, this Court directed the trial court to make a finding of the damages allegedly suffered by respondent, and on August 13, 1953, this Court was furnished with a copy of the order entered by the trial court on August 12, 1953, wherein it denied the motion of respondent to assess the damages as directed by this Court

and ordered that the record be forwarded to the latter Court for whatever action it may deem proper to take in the premises.

It appears that while the trial court was in the process of receiving evidence on the damages incident to the issuance of the writ of preliminary injunction, Lucia Javier, the defendant, died and because of this supervening event, the trial court entertained the view that the claim for damages should be denied because that claim should be filed against the estate of the deceased. It also appears that, when respondent pressed for action on his motion for assessment of damages, counsel for the bonding party, Alto Surety Company, opposed said move on the ground that the action contemplated is too late because the order of the trial court denying respondent's motion for reconsideration and cancelling the bond filed by the surety has already become final and unappealable; and considering that a petition for damages holding the surety liable should be filed before judgment becomes final, the court sustained the opposition and denied the motion to assess damages. The incident is now before this Court for the corresponding appropriate action.

The finding of the trial court that the claim for damages of respondent should be denied because of the death of the debtor, Lucia Javier, and the claim should be filed against the estate of the latter, is not well taken. This result only obtains if the claim is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, (Rule 3, Section 21, Rules of Court), but not when the claim is for damages for an injury to person or property, (Rule 68, Section 1, *Idem*). In the present proceeding, the claim for damages had arisen, not while the action was pending in the Court of First Instance, but after the case had been decided by the Supreme Court. Moreover, the claim of respondent is not merely for money or debt but for damages to said respondent. Thus, Chief Justice Moran, commenting on Section 1, Rule 3, says: "The above section has now removed all doubts by expressly providing that the action should be discontinued upon defendant's death if it is for the recovery of money, debt, or interest thereon, while, on the other hand, in Rule 88, Section 1, it is provided that actions to recover damages for injury to person or property, real or personal, many be maintained against the executor or administrator of the deceased." (Moran, Comments on the Rules of Court, Vol. 1, 1952 ed., p. 109.)

On the other hand, under Rule 3, Section 17, Rules of Court, when a party dies and the claim is not thereby extinguished, the court shall order the legal representative of the deceased, or the heirs to be substituted for him within a period of 30 days, or within such time as may be granted. Here, it appears that no step has so far been taken relative to the settlement of the estate, nor an executor or administrator of the estate has been appointed. This deficiency may be obviated by making the heirs take the place of the deceased.

The claim that the move of respondent to have the damages assessed against Lucia Javier has come late because the order of the court denying the motion for reconsideration of respondent and cancelling the bond filed by the surety has already become final and unappealable, is not also well taken, it appearing that the motion of respondent pressing for action on the motion to assess damages was filed only five days after said order has been entered. It should be noted that the original order entered by the court on April 7, 1953, was not a denial of the claim but merely a statement of its view that no action thereon can be taken in view of the death of Lucia Javier because in its opinion the claim should be filed against her estate, and the order which ordered the cancellation of the bond was entered only on May 27, 1953.

It appearing that the trial court has refrained from assessing the damages which it was directed to assess in the resolution of this Court issued on November 21, 1951, for reasons which, in the opinion of the court, are not well founded, it is the sense of this Court that the record should be remanded to the trial court for it to act as directed in said resolution.

Paras, Benzon, Tunzon, Reyes, Padilla, Montemayor, Jugo, and Labrador, concur. Pablo, J. took no part.

TEODULO T. ORIAS, ET AL., VS. MAMERTO S. RIBO ET AL.,
G.R. No. L-4945, October 28, 1953.

ADMINISTRATIVE CODE; TEMPORARY APPOINTMENT WITHOUT EXAMINATION AND CERTIFICATION BY THE CIVIL SERVICE.—Appointments under Sec. 682 of the Revised Administrative Code, as amended by Com. Acts Nos. 177 and 281 are temporary, when the public interests so require and only upon the prior authorization of the Commissioner of Civil Service, not to exceed three months and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles.

Id., Id. — The fact that the petitioners who were appointed under Sec. 682 of the Revised Administrative Code as amended by Com. Acts Nos. 177 and 281 held the positions for more than three months does not make them civil service eligibles.

Id., Id. — The fact that the acting Commissioner of Civil Service authorized their appointments "under section 682 of the Revised Administrative Code to continue only until replaced by an eligible" does not make them eligibles.

Id., Id. — The holding of a position by a temporary appointee until replaced by an eligible in disregard of the time limitation of three months is unauthorized and illegal.

Id., Id. — The temporary appointment of other non-eligibles to replace those whose term have expired is not prohibited.

Prisco M. Bitos for respondents-appellants and Gonzales and Acasio for respondents-appellees, Provincial Guards. Filemon Saavedra for petitioners-appellants.

DECISION

PADILLA, J.:

This is a petition for a writ of *quo warranto* to test the legality of the appointments of Isidro Magallanes as deputy provincial warden, Pedro Flores as corporal of the provincial guards, and Crisanto Cab, Dalmacio Cortel, Rafael Galeon, Bienvenido Gonzales, Filemon Adobas, Francisco Tavera, Jacinto Barro, Constancio Acasio, Tereso Caidnoy, Narciso Ravago and Arcadio Maglines, as provincial guards of Leyte, with station at Maasin; and of *mandamus* to compel the respondent Mamerto S. Ribo in his capacity as provincial governor to reinstate the petitioners in the positions held by his co-respondents named above, and him (Ribo) and Melecio Palma, the latter in his capacity as provincial treasurer of Leyte, to pay the unpaid salaries allegedly due the petitioners from 1 November 1950 up to the final disposition of this case, and Francisco P. Lopez, in his capacity as clerk of the Court of First Instance of Leyte, to turn over to the petitioners all the prisoners in the provincial jail.

Simultaneously on 12 April 1951 the parties entered into the following stipulations of facts, the first reading as follows—

The petitioners and the respondents Provincial Governor Mamerto S. Ribo and Provincial Treasurer Melecio Palma assisted by their respective counsels have come to the following:

AGREED STATEMENTS OF FACTS

1. That residences of petitioners and respondents are admitted to be that of Leyte as well as of their respective capacities;
2. That the respondents admit the appointment and commissions of the petitioners per Exhibits A, A-1 to A-14. In each and every appointment of said petitioners appear the following authorization by the Acting Commissioner of Civil Service:

"AUTHORIZED under Sec. 682 of the Revised Administrative Code to continue only until replaced by an eligible, but not beyond thirty (30) days from the date of receipt of the certification of eligibles, provided, there is no qualified employee from the ranks who may be promoted to the positions involved.

(Sgd.) Acting Commissioner of Civil Service'

3. That the respondent Governor Ribo addressed a communication to petitioners informing the latter that their services were ordered terminated as of the last working hours of October 31, 1950;

4. That the petitioners are all married and have their children except Felipe Enelo, Vedasto Cabales and Teotimo Mullet who are still single;

5. That the petitioners have not received their salaries cor-