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**[G.R. No. L-31945. April 30, 1973]**

**BENITO SANOY, NORMA LO RUFIN (assisted by Leodegario Rufin) LUISA M. MALAZARTE (assisted by Raymundo Malazarte), FRANCISCO KIAMKO, ALBERTO MARIVELES, MAURO ENOLPE, RENERIO DE LA CERNA, RAYMUNDO BAYNO, DOMINGO CAMINADE, JR., EMILIANO BACALSO, SIMEON DABLO, JOSEFA SABELLANO, MARTIN VITERBO, and PROSERFINA MASAYON,** *petitioners-appellants, vs.* **FRANCISCO S. TANTUICO, JR., Judge of the Cebu Court of First Instance, Branch VI; ACTING CITY MAYOR OF CEBU EULOGIO E. BORRES; CITY OF CEBU; CITY COUNCIL OF CEBU; CEBU CITY TREASURER; and CEBU CITY AUDITOR,** *respondents-appellees.*

**SYLLABUS**

**ADMINISTRATIVE LAW; RULE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE JUDICIAL RELIEF; SUBSTANTIAL COMPLIANCE THEREWITH IN INSTANT CASE.—** The petitioners had substantially complied with the rule of exhaustion of administrative remedies before applying for judical relief. They filed formal protests with the Commissioner of Civil Service against their dismissal in January, 1968 by the respondent City Mayor. The Commissioner's failure to resolve their protests was due, as far as the record shows, to the fact that his request for comment from the respondent Mayor was never complied with. In the meantime the period of one year from the date of removal within which a judicial action of this nature should be commenced was fast running out. So it was that the appellants went to court on a petition for mandamus on October 2, 1968.

**APPEARANCES OF COUNSEL**

*Fernando S. Ruiz* for petitioners-appellants.

*City Attorney Nazario R. Pacquiao* and *Assistant City Attorney Celerino F. Jomuad* for respondents-appellees.

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## DECISION

**MAKALINTAL, *Actg. C.J.*:**

The only question before Us in this case is whether or not respondent Judge of the Court of First Instance of Cebu, Branch VI, acted correctly in dismissing the petitioners' action for mandamus on the ground of non-exhaustion of administrative remedies.

The petitioners were employees of the City of Cebu, with appointments on different dates, the earliest of which was January 2, 1964 and the latest October 8 of the same year. They were not civil service eligibles and belonged to the unclassified service, but were all members of the Government Service Insurance System.

After the local elections in November 1967 a new administration took-over in the City of Cebu. Senator Sergio Osmeña, Jr. had won as City Mayor and respondent Eulogio E. Borres as Vice-Mayor. The former, however, did not assume office and so the said respondent became acting City Mayor. He will hereinafter be referred to simply as Mayor. One of his first acts in office, which he carried out from January 1 to 5, 1968, was to terminate the services of the appellants by sending to them uniformly-worded letters informing them of such termination and asking them to secure the necessary clearances on any money or property accountability. To the positions thus rendered vacant the respondent Mayor appointed non-eligibles.

The appellants asked the Mayor that they be returned to their positions, and after they were denied they protested their removal to the Commissioner of Civil Service by means of letters sent in February 1968. The Commissioner in turn referred the letters of protest to the Mayor for comment but the latter never acted on them. In April 1968 the appellants sent a request in writing to the City Auditor and City Treasurer of Cebu to withhold payment of salaries to those who had been appointed in their places.

On October 2, 1968, no definite action having been taken by the Commissioner of Civil Service on their protests, the appellants went to court on a petition for mandamus against City Mayor Borres, the City Council, the City Treasurer, the City Auditor and

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the City of Cebu itself, alleging that their dismissal was summary, without previous investigation and in violation of the Civil Service Law and Regulations, and asking that they be reinstated with back salaries, damages and attorney's fees.

After the respondents filed their answer the court asked the parties to submit a written stipulation of facts, which they did, reserving their right to present additional evidence. On the date set for the reception of such evidence the Judge declined to hear the witnesses who were ready to testify, and declared that he would first consider the respondents' first defense of non-exhaustion of administrative remedies. This he did on August 13, 1969, when he issued an order dismissing the petition on the said ground.

We hold that the respondent Judge was in error. The petitioners had substantially complied with the rule of exhaustion of administrative remedies before applying for judicial relief. They filed formal protests with the Commissioner of Civil Service against their dismissal by the respondent City Mayor. The Commissioner's failure to resolve their protests was due, as far as the record shows, to the fact that his request for comment from the respondent Mayor was never complied with. In the meantime the period of one year from the date of removal within which a judicial action of this nature should be commenced (Unabia *vs.* Honorable City Mayor, et al., 99 Phil. 253; De la Cerna *vs.* Osmeña, Jr., et al. 105 Phil. 774), was fast running out. So it was that the appellants went to court on a petition for mandamus on October 2, 1968. Their stand on the particular point at issue in the instant appeal before Us finds support in the cases of Gonzales, et al. *vs.* Aldana, et al., 107 Phil. 754, and Cariño, et al. *vs.* ACCFA, 18 SCRA 183. In the Gonzales case this Court held:

> "We find it unnecessary to discuss the other point raised in the appeal, namely, that petitioners have not exhausted the administrative remedies provided by law. Suffice it to say that when petitioners wrote to the Commissioner of Civil Service and to the Secretary of Education, and they failed to obtain the relief sought, and instead the Director of Public Schools threatened to replace them, they had already given an opportunity to these high officials to act upon their petition for relief, which practically, in our opinion, is equivalent to an exhaustion of the administrative remedies provided by law."

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Inasmuch as there are other issues, some of them factual, controverted between the parties as shown by their respective pleadings in the main case below, the petitioners' prayer that We issue an order for their reinstatement cannot at this stage be granted. However, the alternative relief prayed for is in order.

WHEREFORE the order of dismissal complained of is set aside and, pursuant to such alternative prayer, this case is remanded to the court *a quo* for trial and judgment on the merits, with costs against respondent City Mayor of Cebu.

*Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio*, and *Esguerra, JJ.*, concur.

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[G.R. Nos. L-33426 and L-35014. April 30, 1973]

**CESAR VIRATA, in his capacity as Secretary of Finance; ROLANDO G. GEOTINA, in his capacity as Commissioner of Customs; and DOMINADOR GANGOSO, ALEJANDRO F. DIZON, ARTURO LEAÑO and FLORENCIO R. DOMINGO, in their respective capacities as Chairman and Members of the Arrastre Service Bidding Committee, *petitioners, vs.* JUAN L. BOCAR, in his capacity as Judge of the Court of First Instance of Manila, Branch XVI, and E. RAZON, INC., *respondents.***

SYLLABUS

1. **MERCANTILE LAW; ARRASTRE SERVICE; BIDDING; RESERVATION IN ADVERTISEMENT THEREFOR; EFFECT.**— A reservation in the advertisement for bids of the right of the government to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder, and this involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions and, when honestly exercised, may not be reviewed by the Court. In such cases, there is no binding obligation to award