Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-35592. June 11, 1986.]

MEDARDO AG. CADIENTE, *petitioner, vs.* **LUIS T. SANTOS, City Mayor of Davao City, MAXIMINO ASISTIDO, City Treasurer of Davao City, FELIX N. PEPITO, City Auditor of Davao City, and ATTY. VICTOR CLAPANO,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; CIVIL SERVICE; POSITION "PRIMARILY CONFIDENTIAL"; INCLUDES CITY LEGAL OFFICER; REASON THEREFOR.**— In resolving the merits of the instant case, We find as an undeniable fact that the position of a City Legal Officer is one which is "primarily confidential". This Court held in the case of *Claudio vs. Subido,* L-30865, August 31, 1971, 40 SCRA 481, that the position of a City Legal Officer is one requiring that utmost confidence on the part of the mayor be extended to said officer. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected. As stated in the case of *Pinero vs. Hechanova,* L-22562, October 22, 1966, 18 SCRA 4176 (citing *De los Santos vs. Mallaare,* 87 Phil. 289), the phrase '*primarily confidential' denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse, without embarrassment on freedom from misgivings of betrayals of personal trust on confidential matters of state.*

2. **ID.; ID.; ID.; TERM OF OFFICE LASTS ONLY AS LONG AS CONFIDENCE ON THEM ENDURES.**— The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal (*Corpus vs. Cuaderno,* L-23721, March 31, 1965, 13 SCRA 591-596). When such

Supreme Court E-Library

confidencé is lost and the officer holding such position is separated from the service, such cessation entails no removal but an expiration of his term. In the case of *Hernandez vs. Villegas*, L-17287, June 30, 1965, 14 SCRA 548. It was held: "It is to be understood of course that officials and employees holding primarily confidential positions continue only for so long as confidence in them endures. The termination of their official relation can be justified on the ground of loss of confidence because in that case their cessation from office involves no removal but merely the expiration of the term of office— two different causes for the termination of official relations recognized in the Law of Public Officers."

3. **ID.; ID.; ID.; EXPIRATION OF TERM DISTINGUISHED FROM REMOVAL OR DISMISSAL.**— The matter of expiration of a term of an officer holding a primarily confidential position, as distinguished from a removal or dismissal, was further explained by this Court, in the case of *Ingles vs. Mutuc*, L-20390, November 29, 1968, 26 SCRA 171, in this wise: "When an incumbent of a primarily confidential position holds office at the pleasure of the appointing power, and the pleasure turns into a displeasure, the incumbent is not removed or dismissed from office — his term merely expires, in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and cannot be deemed removed or dismissed therefrom, upon expiration of said term. "The main difference between the former — the primarily confidential officer — and the latter is that the latter's term is fixed or definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this event takes place, the latter is not removed or dismissed from office — his term merely expired."

D E C I S I O N

ALAMPAY, *J.*:

Petition for review on certiorari of the decision of the

Supreme Court E-Library

Court of First Instance of Davao City, Branch I, in Civil Case No. 7571, entitled *"Medardo Ag. Cadiente vs. Mayor Luis T. Santos, et al."*, promulgated on August 23, 1972, which dismissed the petition for mandamus, *quo warranto*, with preliminary injunction filed by herein petitioner.

On September 13, 1971, petitioner Cadiente was appointed by then Mayor Elias B. Lopez as City Legal Officer of Davao City. The appointment was duly attested to and/or approved as "permanent" by the Civil Service Commission under Section 24(b) of R.A. 2260. On January 6, 1972, the new and then incumbent City Mayor Luis T. Santos, herein respondent, sent a letter (Annex "H" to the Petition, p. 43, *Rollo*) to the petitioner advising the latter that his services as City Legal Officer of Davao City "are dispensed with effective upon receipt of said letter" on the ground that the position of City Legal Officer was primarily confidential in nature. This was the opinion rendered by the City Fiscal of Davao City on January 6, 1972, after being requested to submit his legal opinion on said matter, Respondent City Mayor appointed respondent Atty. Victor Clapano as City Legal Officer on January 6, 1972 to take effect on said date.

Petitioner appealed to the Civil Service Commission on January 7, 1982, which rendered its decision in its 1st Indorsement dated March 2, 1972, therein holding that the termination, removal and/or dismissal of petitioner is "without cause and without due process" and that the position of City Legal Officer "is not included among those positions enumerated in Sec. 5 of R.A. 2260 as belonging to the non-competitive service." Subsequently, on April 7, 1972, the City Council of Davao City passed Resolution No. 210, series of 1972, therein considering and recognizing herein petitioner Atty. Medardo Ag. Cadiente, as the rightful City Legal Officer of Davao City (*Rollo*, pp. 54-58). Despite this resolution, the public respondents in this case who are the City Mayor, the City Treasurer, and the City Auditor

Supreme Court E-Library

of Davao City, still declined and refused to recognize petitioner as the one entitled to the disputed position of City Legal Officer of Davao City.

Meanwhile, in an Indorsement (Annex "O" to the Petition, p. 59) dated February 8, 1972, the Civil Service Commission returned the appointment of respondent Clapano to respondent City Mayor with the information that said office (Civil Service Commission) "overlooked the fact that the appointee was more than 57 years old at the time of his appointment and, therefore, authority for his appointment be first secured from the Office of the President pursuant to Section 6 of R.A. 728, as reinforced by Section 5, Civil Service Rule IV, which states that "no person shall be appointed or reinstated in the service if he is already 57 years of age, unless the President of the Philippines x x x determines that he possesses special qualifications and his services are needed.

Petitioner thus filed with the Court of First Instance of Davao City, Branch I, Civil Case No. 7571, for *mandamus, quo warranto* with preliminary injunction against the herein respondents, praying therein that: (a) respondent City Mayor be ordered to reinstate and/or allow him to continue performing his duties and functions as City Legal Officer of Davao City; (b) the appointment of respondent Clapano be declared illegal and invalid; and (c) respondents City Mayor, City Treasurer, and City Auditor be ordered to pay him all his salaries, wages, allowances, emoluments an other benefits due him as City Legal Officer from the time of his illegal dismissal until the termination of the suit. On August 23, 1972, the trial court rendered its decision dismissing the aforestated case, as it ruled that:

"The positions of Municipal Attorney, Provincial Attorney and City Legal Officer are by their very nature, primarily confidential, and therefore, belong to the non-competitive service under paragraph 1, section 5, Republic Act 2260, as amended, because the functions attached to the offices require the highest

Supreme Court E-Library

trust and confidence of the appointing authority on the appointee.
x x x

"The approval of, and attestation to the appointment of petitioner Cadiente as permanent under Section 24(b) of R.A. 2260, as amended, by the Commissioner of Civil Service did not make the appointment permanent and the position fall under the competitive service. If, as the Court has found, the position is primarily confidential, petitioner Cadiente held office at the pleasure of respondent Mayor and the position belongs to the non-competitive service."

Motion for reconsideration of said decision having been denied in an Order dated September 23, 1972, the present petition to compel reinstatement and payment of back salaries, was filed with this Court on October 7, 1972. In the Resolution of this Court dated December 28, 1972, said petition was given due course.

In resolving the merits of the instant case, We find as an undeniable fact that the position of a City Legal Officer is one which is "primarily confidential". This Court held in the case of *Claudio vs. Subido*, L-30865, August 31, 1971, 40 SCRA 481, that the position of a City Legal Officer is one requiring that utmost confidence on the part of the mayor be extended to said officer. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected. As stated in the case of *Pinero vs. Hechanova*, L-22562, October 22, 1966, 18 SCRA 4176 (citing *De los Santos vs. Mallaare*, 87 Phil. 289), the phrase *'primarily confidential' denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse, without embarrassment on freedom from misgivings of betrayals of personal trust on confidential matters of state*. (Italics supplied).

Supreme Court E-Library

The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal (*Corpus vs. Cuaderno*, L-23721, March 31, 1965, 13 SCRA 591-596). When such confidence is lost and the officer holding such position is separated from the service, such cessation entails no removal but an expiration of his term. In the case of *Hernandez vs. Villegas*, L-17287, June 30, 1965, 14 SCRA 548, it was held:

"It is to be understood of course that officials and employees holding primarily confidential positions continue only for so long as confidence in them endures. The termination of their official relation can be justified on the ground of loss of confidence because in that case their cessation from office involves no removal but merely the expiration of the term of office — two different causes for the termination of official relations recognized in the Law of Public Officers."

In the case at bar, when the respondent City Mayor of Davao terminated the services of the petitioner, he was not removed or dismissed. There being no removal or dismissal it could not, therefore, be said that there was a violation of the constitutional provision that "no officer or employee in the civil service shall be suspended or dismissed except for cause as provided by law" (Article XII-B, Section 1(3), 1973 Constitution).

The matter of expiration of a term of an officer holding a primarily confidential position, as distinguished from a removal or dismissal, was further explained by this Court, in the case of *Ingles vs. Mutuc*, L-20390, November 29, 1968, 26 SCRA 171, in this wise:

"When an incumbent of a primarily confidential position holds office at the pleasure of the appointing power, and the pleasure turns into a displeasure, the incumbent is not removed or dismissed from office - his term merely expires, in much the same way as an officer, whose right thereto ceases upon expiration of the

Supreme Court E-Library

fixed term for which he had been appointed or elected, is not and cannot be deemed removed or dismissed therefrom, upon expiration of said term.

"The main difference between the former — the primarily confidential officer — and the latter is that the latter's term is fixed or definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this event takes place, the latter is not removed or dismissed from office — his term merely expired."

The foregoing merely elaborates what this Court, speaking thru Justice J.B.L. Reyes, stressed in the case *Corpus vs. Cuaderno*, L-23721, March 31, 1965, 13 SCRA 591. In said case We stated that:

"The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures, and thus their cessation involves no removal."

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Feria (Chairman), Fernan, Gutierrez, Jr., and *Paras, JJ.*, concur.