Yalap v. ROP, 3 ROP Intrm. 61 (1992)

ALEXIUS O. YALAP and NGIRAKESOL MAIDESIL,
Plaintiffs/Appellants,

v.

REPUBLIC OF PALAU, Rep. By President NGIRATKEL ETPISON,
Minister of Justice KUNIWO NAKAMURA and
Director of Public Safety KAORU BRELL,
Defendants/Appellees.

CIVIL APPEAL NO. 18-91
Civil Action No. 86-91

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion and order
Decided: February 20, 1992

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: Gerald G. Marugg III

BEFORE: LOREN A. SUTTON, Associate Justice; ROBERT A. HEFNER, Associate Justice; and ALEX R. MUNSON, Associate Justice

PER CURIAM:

Appellants are appealing a ruling of the Trial Court, dated April 15, 1991, which granted the Republic of Palau's motion to dismiss Appellants' "Appeal from an Adverse Decision by the Defendants" to terminate Appellants' employment with the Bureau of Public Safety.

On January 7, 1991, Appellants received written notice that their employment with the Bureau of Public Safety would terminate on January 17, 1991, for reasons specified in the notice. The ⊥62 notices informed Appellants that they had a right to a hearing pursuant to Sub-part 11.9 of the Public Service System Rules and Regulations ("Rule 11.9"), as well as a right to appeal to the Court of Common Pleas.

Under 33 PNC § 426(a), Appellants had 30 days after the notice was sent within which to bring an action for reinstatement and loss of pay in the Court of Common Pleas. According to Rule 11.9(a), Appellants had a separate and distinct right to request a hearing before an impartial hearing officer designated by the Chair of the National Civil Service Board ("NCSB") within seven days of receipt of the notice of adverse action. Appellants elected to request an administrative hearing pursuant to Rule 11.9, which was held on January 17, 1991. They did not, and have not, filed an action for reinstatement in the Court of Common Pleas.

In his report to the Chair of the NCSB, dated January 21, 1991, the impartial hearing officer recommended that both officers be reinstated as police officers without loss of pay. By letter dated February 4, 1991, the Director of Public Safety rejected the hearing officer's recommendations and proceeded to terminate Appellants' employment with Public Safety.

Appellants filed an appeal of the Director's decision to terminate their employment in the Trial Division of the Supreme Court on March 6, 1991, 30 days after the date of the Director's final letter of termination. The appeal alleged that the Director had no authority to reject the recommendations of the impartial hearing officer. Therefore, his February 4, 1991, decision to ⊥63 terminate Appellants' employment was null and void.

Appellees filed a motion to dismiss the appeal alleging that the Trial Court lacked jurisdiction because an action had not first been instituted in the Court of Common Pleas as required by 33 PNC § 426(a). Appellants argued that 33 PNC § 426(a) should be read to vest jurisdiction in the Trial Division, and not the Court of Common Pleas because Article X, Section 5 of the Palau Constitution states that the Trial Division shall have original and exclusive jurisdiction over all matters in which the national government is a party.

The Trial Court granted the motion to dismiss on April 15, 1991, because Plaintiffs/Appellants had failed to comply with 33 PNC § 426(a) and file an action in the Court of Common Pleas within 30 days of notice of adverse action. The court also ruled that the procedures in Title 33 supersede those set forth in Title 6, the Administrative Procedures Act, with respect to personnel actions, demotions, dismissals or suspensions. Appellants filed a notice of appeal of the Trial Court ruling on May 13, 1991.

Based on legislative history pertaining to Title 33, we find that the NCSB was not intended to review personnel grievances. *See*, Senate Standing Comm. Report No. 228 RE: House Bill No. 1-0162-5, HD1, July 12, 1982 (the "Senate Report"). The Senate Report specifically states that the NCSB was retained "only to promulgate regulations covering the system," and was to have no role in reviewing management or employee services. "Your Committee felt this to be inefficient and notes that in the past such ⊥64 procedures have been abused by both management and employees. Thus, grievances should be brought to the Court of Common Pleas . . ." *Id.*

In addition, the legislative history confirms that the adjudicative proceedings provided for at Subchapter III of Title 6, the Administrative Procedures Act, were not intended to apply to dismissals, demotions, and suspensions pursuant to Title 33. The legislature intended Title 33 grievances to be heard by a court, and not an administrative agency. *Id.*

Appellants did not file an action in the Court of Common Pleas within 30 days as prescribed by 33 PNC § 426(a), however, they did file an appeal in the Trial Division within 30 days of the final notice of termination. Their appeal challenged the Court of Common Pleas' jurisdiction, alleging that the Trial Court has original and exclusive jurisdiction based on Article X, Section 5 of the Constitution. The fact that their pleading was filed as an "appeal" instead of

a "petition" or "complaint" is a matter of form and not substance, which is not sufficient to defeat the merits of this cause of action.

It is true that a statute affecting jurisdiction will be construed if reasonably possible so as not to be in conflict with a constitutional provision. *Buckley v. Valeo*, 424 U.S. 1, 108, 96 S.Ct. 612, 677 (1976); 20 Am.Jur.2d., *Courts*, 91. It is also true, however, that if all or part of a statute clearly violates the constitution, the court must give effect to the language of the constitution without regard to the consequences. *City Council v. Taxpayers for Vincent*, 466 U.S. 795, 104 S.Ct. 2118, 2124 (1984); ⊥65 *Buttfield v. Stranahan*, 192 U.S. 470, 24 S.Ct. 349, 354 (1904); 2A *Sutherland Statutory Construction* 45.11. Article X, Section 5 of the Constitution confers original and exclusive jurisdiction over this case to the Supreme Court because the national government is a party. A statute, 33 PNC § 426(a), purports to confer original jurisdiction over this matter to the Court of Common Pleas.

In the absence of a constitutional restriction, the legislature may vest certain courts with concurrent jurisdiction, as it may vest certain courts with exclusive jurisdiction over certain kinds of cases. 20 Am.Jur.2d., *Courts*, 106 (emphasis added). The Supreme Court may decline the exercise of original jurisdiction if such jurisdiction is not exclusive. *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 497, 91 S.Ct. 1005, 1009 (1971) (emphasis added); 8 *Federal Procedure* 20:221.

According to Article X, Section 5 of the Palau Constitution, only the Supreme Court has jurisdiction to hear cases in which the national government is a party. Generally, a court having jurisdiction of a case has not only the right and power but also the duty to exercise that jurisdiction. ". . . it is a time-honored maxim of the Anglo-American common law that a court possessed of jurisdiction generally must exercise it." *Ohio, supra*; *see, also, England v. La. State Brd. of Medical Examiners*, 375 U.S. 411, 415, 84 S.Ct. 461, 465 (1964); *Knox Co. v. Aspinwall*, 24 How. (US) 376, 16 L.Ed. 735, 738 (1861). This is particularly true when the court has exclusive jurisdiction, otherwise the parties would be denied a forum.

⊥66 On its face, 33 PNC § 426(a) conflicts with Article X, Section 5 of the Constitution. The Court of Common Pleas lacked the power to hear or determine Appellee's case and lacked authority over the subject matter and the parties. Had an action been filed in the Court of Common Pleas, that tribunal would have had no recourse but to dismiss for want of jurisdiction under the Constitution. *See, New Orleans Mail Co. v. Fernandez*, 12 Wall (US) 130, 20 L.Ed. 249, 251 (1870). The Supreme Court's jurisdiction over cases in which the national government is a party is fixed by Article X, Section 5, and the Legislature is powerless to abridge or enlarge the Court's Constitutional jurisdiction. *See, KSG vs. WCTC*, 2 ROP Intrm. 306, 309 (1991); 20 Am.Jur.2d., *Courts*, 91.

The legislature is presumed to intend to pass a valid act. 73 Am.Jur.2d. Statutes 249. A law should be construed to sustain its constitutionality whenever possible, and to give it efficient operation and effect as a whole. *Buckley v. Valeo*, 96 S.Ct. at 677; *Crowell v. Benson*, 285 U.S. 22, 46, 52 S.Ct. 285, 290 (1932); *Walters v. Bank of America Nat. Trust and Svg. Asscc.*, 9 Cal.2d. 46, 69 P.2d. 839 (1937). Courts generally extend the duty to sustain an act to include the

obligation to uphold those parts of an act which are severable from invalid parts. *El Paso & NE Ry. Co. v. Gutierrez*, 215 U.S. 87, 95, 30 S.Ct. 21, 24 (1909); *Electric Bond & Shate Co. et al. v. SEC*, 303 U.S. 419, 58 S.Ct. 678, 683 (1938). ". . . Invalid parts are to be excised and the remainder enforced." *Id.*

Rather than nullify 33 PNC § 426 in its entirety, this Court ⊥67 will observe its duty to excise the unconstitutional language and construe the law so as to be consistent with the Constitution. Under this construction of Section 426, a regular employee who is suspended for more than three working days, or dismissed or demoted, may bring an action for reinstatement and loss of pay in the Trial Division of the Supreme Court within 30 calendar days after written notice of his or her suspension, dismissal or demotion. The decision of the Trial Division shall be appealable to the Appellate Division of the Supreme Court in the same manner as appeals of other actions, as provided by Article X, Section 6 of Palau's Constitution. Consequently, the language in Section 426(b) regarding appeal to the Supreme Court of the decision of the Court of Common Pleas is invalid and must be nullified as unconstitutional.

Additionally, rules and regulations promulgated by the NCSB which relate to NCSB review of personnel grievances are inconsistent with the legislative intent behind Title 33 and are therefore void. In particular, NCSB Rules 11.5, 11.6(d), 11.9(a) and (b), 11.10 and 11.12 must be revised to conform to this opinion and the laws and Constitution of Palau.

The Trial Court's ruling on Defendant/Appellee's motion to dismiss, dated April 12, 1991, is hereby REVERSED. The Trial Court has jurisdiction to hear Plaintiff/Appellant's Appeal from an Adverse Decision of the Defendants.