

CONSTITUTIONAL COURT

CONSTITUTIONAL JUDGMENT NO. 310/2000-R

File: 2000-00849-02-RAC

Subject: CONSTITUTIONAL *AMPARO*

District: Chuquisaca

Parties: Gloaria Máxima Ortiz Rivera against Fidel Herrera Ressini, Mayor of Sucre

Place and date: Sucre, 6 April 2000

Judge ReportingL Dra. Elizabeth Iñiguez de Salinas

OPINIONS: In review of Resolution No. 035 of 26 February 2000, as 16 to 17 of the court report, passed by the First Civil Chamber of the Superior Court of the Judicial District of Chuquisaca, within the Claim for the Constitutional Remedy of *Amparo* [an extraordinary remedy that offers immediate protection against illegal acts and omissions of authorities or individuals that restrict, deny or threaten to restrict or deny fundamental rights and guarantees of the person, as recognised by the Constitution and laws] as filed by Gloria Máxima Ortiz Rivera against Fidel Herrera Ressini, Mayor of Sucre; his background facts; and

CONSIDERING: That, in review of the record, it is evident that:

1. In the application (at 8 to 9 of the court report), the claimant states that in her capacity as an employee at the Municipality of Sucre, she received memorandum No. 473/99 of 5 October 1999, by which she was assigned level four occupational activity status; and memorandum No. 95/00 of 22 February 2000, which situated her in the fifth bracket of the payroll, which constituted a demotion and an indirect dismissal.
2. The claimant stated that upon reaching her 32nd week of pregnancy, she was prevented from accepted the new role of Technical Planner D-6, because the assigned occupational activity for this position is located in a rural district. The claimant alleges that memo No. 95/00 is in contravention of arts. 1 of the Act 975 of 2 March 1988 and 193 of the Political Constitution of the State. Finally, given that the Mayor is the ultimate authority of the municipality institution to which she belonged, there were no other means of protecting her rights than making a claim for Constitutional *Amparo* in accordance with art. 19 of the Political Constitution of the State, requesting the immediate reinstatement of her former position.
3. The claimant stated that the claim procedurally conformed with the law, and a Public Hearing was held on 26 February 2000, (as noted in 14 to 15 of the report). During the Public Hearing, the counsel for the claimant confirmed the terms of the claim and requested that before the judicial analysis was carried out, the court make a ruling as to the admissibility of the claim within the scope of the law.
4. The respondent authority, through their counsel, advised that in accordance with the provisions of the Legislative Act 975 of 2 March 1988, the respondent proceeded to relocate the claimant to another post commensurate with her condition, enabling her to enjoy all of the benefits, without having diminished her pay en enabling her to enjoy prenatal rest, and thus there is no legal basis for the commencement of this claim. Moreover, counsel for the respondent stated that the claimant had not

exhausted other legal avenues as required before the commencement of a claim for *amparo*.

5. Resolution No. 035 of 26 February 2000 (at 16 to 17), passed by the First Civil Chamber of the Superior Court of the District of Chuquisaca declared the claim for *amparo* to be INADMISSIBLE, on the basis that the claimant had not been dismissed, nor had her salary been reduced, that she had not exhausted other legal avenues of appeal, such as an appearance before the City Council or before a relevant labour authority, in accordance with arts. 201-I) of the Political Constitution of the State, art. 12 incs. 16