

94 Phil. 103

[G.R. No. L-5700. December 18, 1953]

LEONILO PAÑA, ET AL., PETITIONERS AND APPELLANTS, VS. CITY MAYOR, ANGEL MEDINA, ET AL., RESPONDENTS AND APPELLEES.

D E C I S I O N

LABRADOR, J.:

The petitioners herein were, prior to January 1, 1952, members of the police force of Ozamis City, while the respondents are the City Mayor and City Treasurer of the same. The petitioners were appointed to their respective positions between the years 1948 and 1951, without any civil service qualifications, their appointments being authorized under the provisions of Section 682 of the Revised Administrative Code (see Exhibits A-1 to W-1.) On January 1, 1952 respondent City Mayor issued a general order relieving all temporary employees of the city, including petitioners herein, of their duties effective January 1, 1952, and thereafter appointed others in their stead. None of the new appointees is a civil service eligible, except three namely, the one appointed to the position occupied by petitioner Leonilo Paña, that appointed to the position vacated by petitioner Rufino Agustin, and Jose Belazo (see Exhibits 1-4).

On January 29, 1952 the petitioners instituted the present action of mandamus to declare the above-mentioned general order, relieving them of their duties, as “unjust, arbitrary and illegal”, because it deprives them of their right to hold office to which they were lawfully appointed without due process of law, and in violation of Republic Act No. 557 and the Civil Service Law and regulations. They therefore prayed that the respondent

city mayor be ordered to reinstate them to their respective positions and that the respondent city treasurer be ordered to pay their salaries. The respondents filed an answer, alleging that the positions held by the petitioners in the City of Ozamis have been vacated as a result of the expiration of their three-month appointments, if they had any such appointments; that the respondent city mayor is under no obligation or duty to appoint them; and that they were separated from the service by operation of law. It therefore prayed that the action be dismissed. After issues were joined, the respondents filed a motion to dismiss on the ground that there is no sufficient cause of action. This motion to dismiss was heard and at the hearing stipulations were entered into and documents were submitted, all of which tend to prove the facts already stated above. The judgment of the Court of First Instance granted the motion and dismissed the case, and thereupon an appeal was made directly to this Court, there being none but questions of law involved in the appeal.

The petitioners were originally appointed to their respective positions by virtue of section 682 of the Revised Administrative Code. The positions of members of the police department of the City of Ozamis are embraced within the classified service, as they are not expressly included in the unclassified service (Sections 670-671, Revised Administrative Code). Under the charter creating the City (Republic Act No. 321), the appointments of the chief and members are not provided for in an express provision of the law, so they are made by the city mayor in accordance with the Civil Service Law, and they may be suspended or removed only in accordance with said law (Section 19, Republic Act No. 321). The provisions of sections 673, 674 and 682 of the Civil Service Law are, therefore, applicable to them. In accordance with section 682 of the Revised Administrative Code when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than 3 months. As petitioners herein were not civil service

eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for periods of 3 months and not more. Thus, we have held in *Orais, et al. vs. Ribo, et al.* (93 Phil., 985), that:

“Appointments

made under the section 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. The fact that the petitioners held the positions for more than three months does not make them civil service eligibles. Also 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. 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. The temporary appointment of other non-eligibles to replace those whose term have expired is not prohibited. Hence the replacement of Teodulo T. Orais, David Lim, Domingo Saligo and Eulalio Bernades, who are non-eligibles, by Isidro Magallanes, Pedro Flores, Francisco Tavera and Narciso Ravago, who are eligibles, is in accordance with law. The replacement of non-eligibles by non-eligibles is lawful under and pursuant to section 682 of the Revised Administrative Code. * * *.”

Wherefore,
the appeal is hereby dismissed and the judgment appealed from is hereby affirmed, with costs in both instances against petitioners. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

