

101 Phil. 48

[G. R. No. L-10483. April 12, 1957]

JUAN B. MENDEZ, PETITIONER AND APPELLANT, VS. RODOLFO GANZON, AND THE CITY, OF ILOILO, RESPONDENTS AND APPELLEES.

D E C I S I O N

REYES, J.B.L., J.:

On August 21, 1953, petitioner Juan E. Mendez was appointed by the Mayor of Iloilo Acting Second Assistant Chief of Police, in the following terms:

August 21, 1953

Mr. Juan B. Mendez
Iloilo City
Sir:

You are hereby appointed actinu second assistant chief of police, (CHIEF' SECRET SERVICE DIVISION) iu the Police Force, City of Iloilo, with compensation at the rate of four thousand (P4,000) Pesos per annum, the appointment to take effect August 21, 1953. (Vice Capt, Santiago L. Imperial, who was called to active duty in the Armed Forces of the Philippines, per Special Order No. 175 of the GHQ, AFP, dated July 30, 1953.)

Very respectfully,

(Sgd.) DOMINADOR J. JOVER
Mayor

Approved under E. O. No. 264, dated April 1, 1940,
By authority of the President:

(Sgd.) Jose P. de Leon
Assistant Executive Secretary

NOTED as temporary pending
receipt of the required medical
certificates:

(Sgd.) Illegible
Deputy Commissioner of Civil Service”
(Exhibit A, Rec. p. 29)

After petitioner had served for more than two years, respondent Mayor, Rodolfo Ganzon, wrote him the following letter:

“January 5, 1956

MR. JUAN B. MENDEZ
Thru the Chief of Police
City of Iloilo

Dear Mr. Mendez:

I regret to inform you of your removal by this Office as Acting; Second Assistant Chief of Police of Iloilo City, effective today.

You are a mere high school graduate and your eligibility is only that of a Patrolman which do not qualify you for the position of Second Assistant Chief of Police, even in an acting capacity.

This, together with the fact that you are not a man of my confidence makes me feel that I can not very well entrust you with such an important and delicate position as Second Assistant Chief of Police of a first class city like the City of Iloilo, which position of Second Assistant Chief of Police is at the same time that of the Chief of the Secret Service Division.

I am putting in your place a first grade civil service eligible who has been a full-pledge practising attorney in the city for many years, one who, I would say, has a wide knowledge, principally of the Criminal Laws of the land, both substantive

and procedural.

Incidentally, this action is in line with the set policy of President Magsaysay as well as that of this administration to place government employees in their proper places where they can render the most useful and efficient service %& the public.

Thus, I wish to inform you that this Office will have no objection to' appointing-you to other position which will be commensurate with your qualification and attainment.

Very respectfully,

(Sgd.) R. Ganzon
Mayor

Mendez then filed, in the Court of First Instance of Iloilo, a petition to enjoin his removal, claiming that as it was done without lawful cause, his dismissal was illegal and void. The Mayor and the City defended the action taken on the ground that Mendez' tenure was purely temporary, being in an "acting" capacity. After due trial, the Court .of First Instance, presided by Judge Hilarion Jarencio, found the petition without merit, and dismissed it. Mendez appealed to this Court.

The judgment must be affirmed. As pointed out in the appealed decision, this Court has already had occasion to consider and rule on the effect of appointments as "acting" officers, and held that their essence lies in their temporary character, and terminability at pleasure by the appointing power. Thus, in *Austria vs. Amante*, 79 Phil. 780, this Court stated:

"Lastly, the appointment of petitioner by the President of the Philippines was merely as Acting Mayor. It is elementary in the law of public officers and in administrative practice that such appointment is merely temporary, good until another permanent appointment is issued, either in favor of the incumbent acting mayor or in favor of another. In the last contingency, as in the case where the permanent appointment ! fell to the lot of respondent, Jose L. Amante the acting mayor must surrender the office to the lucky appointee."

Reiterating this doctrine, we held in *Castro vs. Solidum*, G. E. L-7750, June 30,

1955, that:

“There is no dispute that petitioner has been merely designated by the President as Acting Provincial Governor of Romblon on September 11, 1953. Such being the case, his appointment is merely temporary or good until another one is appointed in his place. This happened when the President appointed respondent Solidura on January 6, 1954, to take his place.”

Petitioner, however, urges that his case is taken out of the operation of the foregoing doctrines because his “acting” appointment was approved by both the President and the Director of the Civil Service, and has thereby become a permanent appointment. This contention is untenable. The 3rd Indorsement from the office of the President, dated November 13, 1953, expressly describes the

“appointment of Mr. Juan B. Mendez, as *acting* second assistant chief of police (Chief, Secret Service Division) in the Police Force, City of Iloilo, at P4,000 per annum, effective August 21, 1963, duly approved . . .”

(Exhibit D; italics supplied)

thus squarely contradicting appellant’s claim.

But there is a more fundamental reason against petitioner-appellant’s claim. For the President or the Director of Civil Service to convert the Iloilo Mayor’s “acting” appointment into a permanent one would not only violate the Charter of the City of Iloilo (C. A. No. 158, sections 10 and 25) vesting exclusively this appointment in the City Mayor; but what is worse, it would infringe the constitutional provision [Article VII, section 10(1)] limiting the power of the Chief Executive over local governments to ‘general supervision as may be provided by law.’ To change the character of a municipal appointment beyond doubt transcends “general supervision.”

Appellant further invokes the provisions of Republic Act, 557, the constitutional protection of civil service tenure, and our decisions in *Abella vs. Rodriguez*,¹ G. R. L-6867, June 29, 1954 (50 Off. Gaz., No. 7, p. 3039) ; *Mission vs. Del Eosario*² G. R. L-6754, February 26, 1954 (50 Off. Gaz., No. 4, p. 1571) ; *Palamine vs. Zagado*,³ G. R. L-6901, March 5, 1954 (50

Off. Gaz., No. 4, p. 1566) ; and Quintos vs. Lacson,⁴ G. R. L-8062, July 18, 1955 (51 Off. Gaz., No. 7, p. 3429). None of these rules applies to positions held in an “acting” character. In the cases invoked, the positions held by the parties summarily removed were permanent, or else there was no proof that the appointment: was temporary in character; hence, the summary removals were declared illegal and void. In the case of petitioner Mendez, the acting (i.e., temporary) character of Ms appointment is beyond controversy; it was expressly so made, and he accepted it on that understanding. He can not, therefore, evade the legal consequences thereof.

The decision appealed from is affirmed. Costs against the petitioner-appellant. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Endencia, and Felix, JJ., poncur.

¹95 Phil., 289.

² 94 Phil., 483.

³ 94 Phil., 494.

⁴97 Phil., 290.
