

G.R. No. L-9032

[ G.R. No. L-9032. September 28, 1957 ]

**RUFINO CABO KHO, PETITIONER-APPELLANT, VS. JOSE V. RODRIGUEZ, AS  
MAYOR OF CEBU CITY, FELIPE B. PAREJA, AS CITY TREASURER, AND RESTITUTO  
CANTOS, AS CITY AUDITOR, RESPONDENTS-APPELLANTS.**

## **D E C I S I O N**

**FELIX, J.:**

This is an appeal from a decision of the Court of First Instance of Cebu dismissing the petition for mandamus filed by Rufino Cabo Kho against the City Mayor, the City Treasurer and the City Auditor of said city (Civil Case No. R-3595). The facts of the case are as follows:

Rufino Cabo Kho was appointed on May 23, 1953, to the position of Detective Inspector of the Cebu City Police Department by the then Acting Mayor Vicente S. del Rosario. On December 8, 1953, petitioner received a letter from Mayor the Jose V. Rodriguez, who was then the incumbent, terminating his services effective December 9 of the same year, on the ground that the latter had lost trust and confidence in him and said position was subsequently filled by one Nicanor Trinidad.

Rufino Cabo Kho, therefore, filed a petition for mandamus on July 7, 1954, with the Court of First Instance of Cebu praying that his dismissal from the service be declared illegal, invalid and without force; that the City Mayor be ordered to reinstate him to the position of Detective Inspector of the police force; that the respondents City Treasurer and City Auditor or their successors be ordered to pay to said petitioner his salary from the time he was illegally separated from the service up to the date of actual reinstatement; and for such other remedies as may be just and equitable in the premises.

On July 21, 1954, respondents filed their answer contending that petitioner was dismissed in accordance with Executive Order No. 264 and the standing ruling of the Commissioner of Civil Service to the effect that the position of detective in the secret service of the city government was one primarily confidential and included in the unclassified service of the

government, not subject to Civil Service rules and regulations and therefore could be removed from the service for lack of confidence on the part of the Mayor that said dismissal was effected before the promulgation of the decision of the Supreme Court in the case of Mission at al. vs. del Rosario et al., G. R. No. L-6754 on February 26, 1954, declaring that the provisions of Executive Order No. 264 were repealed in so far as they were in conflict with Republic Act No. 5571 that petitioner was appointed by Mayor Vicente S. del Rosario to take the place of Detective Inspector Hilarion Vestil, who together with 43 other detectives were dismissed from the service and which mass dismissal was declared illegal by the Supreme Court; that as ordered by the Court, Hilarion Vestil was reinstated to the service in the Cebu City Police Department; that up to the time of his separation, petitioner had not qualified in any government examination; that not being a Civil Service eligible, petitioner's appointment should be deemed temporary or emergency in nature renewable every 90 days in accordance with the Revised Administrative Code. It was thus prayed that the petition be dismissed with costs, and that petitioner be condemned to pay the respondents compensatory, moral and exemplary damages amounting to P25,000.00, attorney's fees in the sum of P5,000.00 and for such other relief as may be deemed just and proper in the premises.

Due hearing was conducted on the matter and after the parties had filed their respective memoranda, the Court issued, an order dismissing the petition and holding that as petitioner was designated by Mayor Vicente S. del Rosario to take the place of one of those dismissed men, whose dismissal was declared by the Supreme Court illegal and as those illegally deprived of their positions were ordered reinstated, the position to which he had been assigned was not factually vacated and his appointment to the service cannot be validated.

The motion to reconsider said order having been denied, the petitioner brought the matter to this Court on appeal.

The record shows that the parties entered into a stipulation of facts which reads as follows:

#### STIPULATION OF FACTS

1. That both petitioner and respondents are of legal age and residents of the City of Cebu, Philippines; that respondents Jose V. Rodriguez, Felipe B. Pareja, and Restituto Cantos are the duly appointed mayor, treasurer and auditor of the City of Cebu, respectively;

2. That the petitioner was appointed detective inspector in the Cebu Police Department by former Mayor Vicente S, del Rosario as shown lay a certified copy of his appointment, hereto attached as Annex 'A', which is made an integral part hereof;
3. That on December 9, 1953, the respondent Mayor dismissed the petitioner from his position as detective inspector without being given a chance to explain his side, and without conducting any prior investigation whatsoever;
4. That the cause of the removal of the petitioner from the service was transmitted to him by the respondent City Mayor.in a letter of advice, the contents of which are quoted in full as follows;

'Sirs: Since you are holding a position involving trust and confidence; that you could immediately be dismissed the moment that trust and confidence is lost - a dictum which has been sustained by a Malacañan circular and reinforced recently by a Court ruling, and because I have no trust and confidence in you, please be advised that your services are hereby terminated effective at the close of business hours tomorrow, December 9, 1953. Respectfully ....

A certified true copy of which is hereto attached as Annex 'B1;

5. That on the day of his removal from the service, the petitioner was discharging the duties and functions of his office and was not under investigation for any charge having relation to the performance of his office;
6. That upon removal of the petitioner from the service by the respondent City Mayor, the respondents City Treasurer and City Auditor stopped the payment of the salary of the petitioner;
7. That the petitioner was appointed to and actually occupying the position of detective in the Secret Force of the Police Department of the City of Cebu;
8. That the Executive Order No. 264 of the President of the Philippines and the standing ruling of the Commissioner of Civil Service in this connection definitely classify the position of detectives in the Secret Service of the City Government as one primarily confidential in nature; include the same in

the unclassified service of the Government, not subject to Civil Service rules and regulations; and specifically provides that they could be separated from the service for lack of trust and confidence by the City Mayor unless they be civil service eligibles in which case the reason or reasons for their separation need be also stated;

9. That the dismissal of the herein petitioner was effected after Judge Florentino Saguin of the Court of First Instance of Cebu had decided the case of Ahmed Alcamel Abella versus Jose V. Rodriguez, as City Mayor of Cebu and Antonio Uy versus Jose V. Rodriguez, as City Mayor of Cebu, enforcing the Executive Order and the standing ruling of the Commissioner of Civil Service aforementioned, and before the decision of the Supreme Court in the mandamus case entitled Mamerto Mission et al., versus Vicente S. del Rosario, et al., virtually nullifying them;
10. That the petitioner was the one appointed by the former Acting City Mayor Vicente S. del Rosario to take the place of detective inspector Hilarion Vestil dismissed by the said City Mayor after his assumption of office;
11. That in the quo warranto case entitled Jose V. Rodriguez versus Vicente S. del Rosario, filed with the Supreme Court, the latter decided that the designation of former Acting Mayor Vicente S. del Rosario to act temporarily as Mayor of the City of Cebu is illegal;
12. That Hilarion Vestil has already been returned to the service of the City Government in the same police department of the City of Cebu;
13. That the herein petitioner has already collected the full amount covering the terminal leave;
14. That the herein petitioner up to the time of his dismissal from the service had not qualified in a patrolman examination or in any other examinations given by the Commissioner of Civil Service;
15. That the parties will present additional evidence with regard to matters not specifically covered by the foregoing stipulation of facts”.

It appears from the foregoing that petitioner-appellant Rufino Cabo Kho occupied the position of detective inspector Of the Cebu City Police Department vice Hilarion Vestil who Has previously dismissed, but whose dismissal was later declared, illegal by this Court and in virtue thereof said Vestil was ordered reinstated to the service. Appellant pointed out that although Vestil returned to the police force, he was not appointed or reinstated to his former position tat to the position of Second Lieutenant in the uniformed division of the

same police department, and Nicanor Trinidad was appointed to the position of Detective Inspector. However, it can be gathered from the records that Nicanor Trinidad is also one of those illegally dismissed by Mayor del Rosario and most probably, when said men were reinstated, there had been some reshuffling of positions with the result that Trinidad got the former position of Vestil and the latter became a second Lieutenant.

Petitioner-appellant also asserts that he was removed from the service without cause and neither with the benefit of an investigation as provided for by Republic Act No. 557. Citing numerous decisions of this Court upholding his view, petitioner maintains that even if he is not a Civil Service eligible and has to be replaced by one who is eligible, still he cannot be dismissed without compliance with the provisions of said Republic Act No. 557, and, therefore, that his removal from the service was illegal.

On the basis of the facts of this case which have already been recited, we must conclude that petitioner cannot be reinstated to his former position of Detective Inspector of the Cebu City Police Department because the previous incumbent of the position that he filled was illegally dismissed' and had to be reinstated in virtue of a decision of this Court, and the fact that petitioner's position was actually occupied by Eleanor Trinidad who, together with Hilarion Vestil, was one of those unlawfully dismissed who must also be reinstated in accordance with Our decision a fore said, does not entitle petitioner to remain in his former position, because the Cebu authorities were bound, to comply with Our decision providing for the reinstatement of those who had been unlawfully discharged. This being so petitioner could not be paid his back salaries from the time of his separation from the service until his reinstatement, as this latter event is not going to take place, at least as a result of these proceedings.

Moreover, this action for mandamus was brought by Rufino Cabo Kho against the Mayor, treasurer and Auditor of Cebu City, without including this City as a party thereof, and even if petitioner's pretensions to bad; salaries were meritorious, which are not, considering that actions must be prosecuted by and against the real parties in interest that must have their day in court, the City of Cebu which would have to pay said back salaries cannot be sentenced to make such disbursement because it was not a party to the action and was not heard in these proceedings (Angara vs. Gorospe, G.R. No. L-9230, prom. April 22, 1957; City of Bacolod vs. Enriquez, G.R. No. L-9775, prom. May 29, 1957; and Cabanes vs. Rodriguez, G.R. No. L-9799, prom. May 31, 1957). On this score alone, the petition must necessarily be dismissed.

Lastly, in the latter case of Cabanes vs. Rodriguez, supra, the facts of which practically are on all fours the same as those of the case at bar, this Court, through Mr. Justice Labrador, further pronounced;

“The second ground why the petition should be dismissed is failure to comply with Section 21 of Commonwealth Act No. 58 (Charter of Cebu City), which provide:

‘Sec. 21. Appointment and removal of officials and employees. - x x  
x x.

Subject to the provisions of the Civil Service Law, the Mayor shall appoint all other officers and employees of the city whose appointment is not otherwise provided for by law. The Mayor may suspend, and remove, any appointive city officer or employee not appointed by the President of the Philippines, and may recommend to the President of the Philippines the suspension or removal of any city officer or employee appointed by him. Any such suspension or removal by the Mayor shall be appealable to the Department Head, whose determination of the matter shall be final.’ “

There is no showing in the instant case that petitioner-appellant ever make use of this provision of law and as We have consistently adhered to the principle that courts cannot grant relief where the parties failed to exhaust all the administrative remedies available, the petition must perforce be dismissed also on this ground.

WHEREFORE, the decision appealed from is hereby affirmed, pronouncement as to costs.

IT IS SO ORDERED.

*Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes J.B.L., and Endencia, JJ., concur.*

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