103 Phil. 391

[G. R. No. L-11602. April 21, 1958]

ALFREDO CUADRA, PETITIONER AND APPELLANT, VS. TEOFISTO M. CORDOVA, IN HIS CAPACITY AS MAYOR OF BACOLOD CITY, RESPONDENT AND APPELLEE.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for mandamus filed before the Court of First Instance of Negros Occidental seeking petitioner's reinstatement as a pftliceman of the City of Bacolod and the payment of his back salaries from the date of his dismissal to the date of his reinstatement. Respondent in his answer set up the defense that petitioner has been removed from the service in accordance with law.

The case was submitted on an agreed stipulation of facts. Thereafter, the trial court rendered decision holding that the appointment of petitioner was not in accordance with law and so his dismissal was proper. It consequently dismissed the petition. From this decision, petitioner appealed.

The important facts to be considered in this appeal are: Petitioner was not a civil service eligible. He was temporarily appointed as member of the police force of Bacolod City on November 11, 1955. The position to which he was appointed was a newly created one, the salary for which was, included in the budget for the fiscal year 1955-1956. This budget was approved by the City Council on November 14, 1955, and by the Secretary of Finance on January 18, 1956. Petitioner was paid his salary for the service he had rendered from the date of his appointment to the date of his removal. Petitioner is a high school graduate and had been employed before the war in the City Engineer's Office of Bacolod City for about two years and was later transferred to the Patrol Division of Bacolod Police Department until the coming of the Japanese in May, 1942. He was also employed as confidential agent of former Mayor Amante and served in that capacity from 1953 to 1954. He was never accused of any crime nor were charges filed against him before his dismissal.

In justifying the dismissal of petitioner from the service, the trial court gave as its only reason the fact that he was already 47 years, 3 months and 13 days old when he was appointed to the position of member of the police force of Bacolod City and as such he was disqualified for such appointment in the light of Section 17 of Executive Order No. 175, series of 1930, which provides in part that "To be eligible for examination for initial appointment, a candidate must be a citizen of the Philippines, between the ages of twenty-one and thirty, of good moral habits and conduct, without any criminal record, and must not have been expelled or dishonorably discharged from the civil or military employment." It is claimed by appellant that such ruling is erroneous because such provision of the Executive Order only applies to one who desires to take a civil service examination and not to the appointment of one who, like appellant, had already held several positions in the government.

There is no merit in this claim. Section 17 above referred to specifically provides that "To be eligible for examination for initial appointment, a candidate must be a citizen of the Philippines, between the ages of twenty-one and thirty", which terms are clear enough to raise any doubt as to their import. They refer to an examination for initial appointment, and nothing else, as to which the age of the examinee must be between 21 and 30. This interpretation appears more justified when we consider Section 16 of the same Executive Order which provides that "The Commission of Civil Service shall announce from time to time the date and place of examination to qualify for the police service, which shall be held in accordance with the provisions of the Civil Service law and Rules."

But there is one argument which justifies the separation from the service of petitioner and that refers to the fact that when he was appointed he was not a civil service eligible and his appointment was merely temporary in nature. His appointment being temporary does not give him any definite tenure of office but makes it dependent upon the pleasure of the appointing power. A temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.

Thus, in Villanosa, et al. vs. Alera, et al., G. R. No. L-10586, May 29, 1957, we held:

> " * * *Since it is an admitted fact tliat the nature of the appointments extended to petitioners was merely temporary, the same cannot acquire the character of

permanent simply because the items occupied refer to permanent positions. What characterizes an appointment is not the nature of the item filled but the nature of the appointment extended. If such were not the case, then there would never be temporary appointments for permanent positions. This is absurd. The appointments being temporary, the same have the character of 'acting appointments' the essence of which is that they are temporary in nature. 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 an 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 this Court in Castro vs. Solidum, G. R. No. L-7750, June 30, 1955, declared:

'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 Solidum on January 6, 1954 to take his place.'

"It is, therefore, clear that the appointments of petitioners, being temporary in nature, can be terminated at pleasure by the appointing power, there being no need to show that the termination is for cause (Mendes vs. Ganzon, 101 Phil., 48)."

The decision appealed from is affirmed, without pronouncement as to costs.

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

Date created: October 14, 2014