

MAXIMIANO ATA, ET AL., PETITIONERS-APPELLANTS, VS. REINERIO S. NAMOCATCAT, ET AL., RESPONDENTS-APPELLANTS.*G.R. No. L-35703. October 30, 1972*

Ponente: ANTONIO, J.

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Certified to this Court by the Court of Appeals, is the appeal from the decision of the Court of First Instance of Bohol which raises purely a question of law — * * * the legality of office memorandum No. 4 issued by Respondent Mayor terminating the services of petitioners as members of the police force of the municipality of Valencia, Province of Bohol.

The facts are undisputed. Petitioners are all members of the police force of Valencia, Bohol, having been granted "provisional" appointments as patrolmen by the Municipal Mayor on the following dates respectively indicated opposite their names herein below, to wit:

- (1) Maximiano Ata ----- July 1, 1967
- (2) Paulino J. Banoc ----- July 16, 1967
- (3) Doloroso M. Ipanag ----- July 1, 1967
- (4) Anastacio B. Sales ----- May 12, 1967
- (5) Pedro B. Japos ----- January 2, 1967
- (6) Luis Pait ----- August 3, 1964
- (7) Geronimo Taculad ----- May 17, 1963

At the time of their respective appointments, none of the petitioners possessed any civil service eligibility, much less do any of them, meet the minimum qualifications prescribed by the Police Act of 1966 (Rep. Act No. 4864).

On January 23, 1968 respondent Reinerio S. Namocatcat, in his capacity as incumbent Mayor of Valencia, Bohol, issued Office Memorandum Order No. 4 terminating the services of the above-named petitioners. Petitioners continued however to render service as such policeman until January 27, 1968 although they were paid their salaries only up to January 15, 1968.

Believing that the termination of their services was in violation of the provisions of existing law and that the action taken by respondent Mayor was motivated by political considerations, petitioners, on February 28, 1968 instituted before the Court of First Instance of Bohol, an original petition for Mandamus and Quo Warranto against respondents - Municipal Mayor, Municipal Treasurer and Chief of Police of the Municipality of Valencia. In this original petition, they included as party respondents the newly-appointed patrolmen, namely Ernesto Balakid, Eliseo Cagulada, Ariston Jabonete, Claro Lim and Nicolas Namocatcat, on the belief that these newly appointed policemen were appointed as their replacements.

On July 23, 1968, the trial court dismissed the case with respect to the aforesaid new appointees, it appearing that they were appointed to new additional positions and not as replacements of petitioners. Thereupon, on the same date, petitioners filed an amended petition for Mandamus with prayer for reinstatement with backpay.

The parties submitted the case for decision on the bases of their stipulation of facts and the memorandum filed by respondents, petitioners' having failed to file their memorandum within the period prescribed by the trial court.

The legal issues raised before the court a quo and reiterated in this appeal are as follows:

- (a) Whether petitioners' separation from office by respondent Mayor Reinerio Namocatcat was valid and legal;
- (b) Whether respondent should be ordered to reinstate said petitioners in office as patrolmen and to pay their salaries from January 16, 1968 up to the time of their reinstatement.

On December 20, 1968, the trial court rendered its decision the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

(1) Respondent Reinerio S. Namocatcat, Municipal Mayor of the Municipality of Valencia, Province of Bohol, is hereby ordered to immediately reinstate as members of the Police Force of Valencia, Bohol, petitioners Pedro B. Japos, Luis Pait and Geronimo Taculad and said petitioners are hereby declared entitled to receive their salaries from January 16, 1968 considering that the termination of their services is illegal, null and void and of no force and effect;

"(2) The termination of the services of petitioners Maximiano Ata, Paulino J. Banoc, Doloroso M. Ipanag and Anastacio B. Sales is hereby declared legal, proper and in order and of full force and effect, but they are, however, entitled to the payment of their salaries corresponding to the period from January 16, 1968 to January 27, 1968;

"(3) The Municipal Treasurer of the Municipality of Valencia, Province of Bohol, is hereby ordered to make the necessary payment of salaries of the above-named petitioners.

"No special pronouncement as to costs.

"Furnish a copy of this decision to the Police Commission, Manila and to the Commissioner of Civil Service, Manila.

"SO ORDERED."

From this decision, both parties appealed to the Court of Appeals. Petitioners Maximiano Ata, Paulino J. Banoc, Doloroso M. Ipanag and Anastacio B. Sales appealed from that portion of the decision which ordered the termination of their services while respondents questioned the reinstatement with back salaries of petitioners Pedro B. Japos, Luis Pait and Geronimo Taculad.

On July 17, 1972, respondents filed a Motion to withdraw their appeal on the reinstatement of petitioners Pedro B. Japos, Luis Pait and Geronimo Taculad, said petitioners having been reinstated as members of the police force of the Municipality of Valencia, Province of Bohol pursuant to Resolution No. 41, series of 1972 of the Municipal Council.

On August 31, 1972, the Appellate Court granted the withdrawal of the appeal of respondents, and in the same resolution certified the case to Us, as the only issue raised in the appeal is purely a question of law. The validity of petitioners' Maximiano Ata, Paulino J. Banoc, Anastacio B. Sales, and Doloroso M. Ipanag, separation from the police force of respondent Municipality, hinges solely on the resolution of the question * * * whether the termination of their appointments were effected in accordance with the provisions of the Police Act of 1966 (Rep.

Act No. 4864) and the Civil Service Act of 1959 as Amended (Rep. Act No. 2260).

We must proceed from the fundamental principle, that the security of tenure of appointive public officers in the civil service depends mainly on the nature of their appointment, * * * whether permanent, provisional or temporary. A permanent appointment is predicated, upon the appointee possessing all of the qualifications required by law and regulations for the position to which he is appointed. (Rep. Act No. 2260, Sec. 24 [b].) A provisional appointment is one which may be issued, upon the prior authorization of the Commissioner of Civil Service in accordance with the provisions of the Civil Service Law and the rules and standards promulgated thereunder, to a person "who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment" (Sec. 24 [c], supra). On the other hand, a temporary appointment given to a non-civil service eligible is without a definite tenure of office and is dependent upon the pleasure of the appointing power.[1]

It should be noted that under Republic Act No. 6040, which amended the Civil Service Act and took effect on August 4, 1969, classified appointments to the civil service only to permanent or temporary.[2]

Since a person holding a temporary appointment has no fixed tenure, his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause.[3] A temporary appointment cannot acquire the character of permanence. For what characterizes an appointment is not the nature of the item filled but the nature of the appointment extended.[4]

Under the Police Act of 1966 (Republic Act No. 4864) a "provisional" appointment may be made in accordance with Civil Service Law and rules, where no civil service eligible is available, provided, that in case of a patrolman-appointee, "he shall possess at least the general qualifications provided for in Section nine" of said Act.[5]

Section 9 of the Police Act of 1966, prescribes such general qualifications thus:

"SEC. 9 — General Qualifications for Appointment. - No person shall be appointed to a local police agency unless he possesses the following qualifications:

- (1) He must be a citizen of the Philippines;
- (2) He must be a person of good habits and moral conduct;
- (3) He must be of sound mind and body;
- (4) For appointment in the municipalities he must have at least completed high school, and for provinces and cities, at least completed two years college;
- (5) He must have no criminal record;
- (6) He must not have been dishonorably discharged from military employment or dismissed for cause from any civilian position in the government;
- (7) He must not be less than twenty-three nor more than thirty-three years of age;
- (8) He must be at least five feet, five inches in height in the case of provinces and chartered cities and five feet four inches in the case of municipalities; and
- (9) He must not weigh less than one hundred twenty pounds.

Persons who at the time of the approval of this Act have rendered at least five years of satisfactory service in a provincial, city or municipal police agency although they have not qualified in an appropriate civil service examination are considered as civil service eligibles for the purpose of this Act."

The Police Act of 1966, clearly spells out in explicit terms its lofty purpose * * * to "achieve and attain a higher degree of efficiency in the organization, administration, and operation of local police agencies * * * ", and "to place the local police service on a professional level." (Sec. 1, Rep. Act 4864). To ensure the attainment of such objectives, it specifically prescribes the aforecited minimum qualifications for persons to be appointed to the police force, and in a language mandatory in character provides in Section 9, thereof that: "No person shall be appointed to a local police agency unless he possess" those aforecited "general qualifications." The only ones exempted from the scope of such prohibition are "persons who at the time of the approval of the Act have rendered a minimum satisfactory service of five years."

While these appointments were designated as "provisional" they were in fact mere temporary appointments. For what the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than an appropriate one for the position to which he was appointed.[6]

It should be observed that under Section 11 of Republic Act No. 4864, there are only two categories of appointments to the police force or agency; permanent and temporary. The issuance of a permanent appointment is predicated upon the appointee having qualified in "an appropriate or police service examination" or in the absence of civil service eligibles in having completed the courses of services therein specified. The temporary appointment envisaged in the statute is denominated as "provisional appointment," but it is expressly required that the person extended a "temporary" or "provisional" appointment for patrolman must in the clear language of the law "possess at least the general qualifications provided for in Section nine of the Act." The trial court found however that at the time of their appointments, petitioners did not possess any civil service eligibility, much less did they meet the minimum qualifications required by the Police Act of 1966. We are necessarily bound by such factual findings, since the case was elevated to Us purely on questions of law. Faithful adherence to the statutory commands, therefore compels Us to affirm the decision of the court a quo. For We find neither in the Civil Service Law (Rep. Act No. 2260 as amended) nor in the Police Act of 1966 (Rep. Act No. 4864) any warrant for holding otherwise. Clearly the appointments extended to petitioners being bereft of any statutory sanction or authority, it was undoubtedly within the power and authority of Respondent Mayor to terminate them.

It is insisted however, by petitioners that the "minimum qualifications set forth in Sec. 9 of the Police Act, is merely directory and not mandatory in character * * * otherwise, petitioners' appointments could not have been given imprimatur or due approval by the Civil Service Commissioner." This argument overlooks the object which the Police Act of 1966 seeks to accomplish, and the purpose it intends to subserve. As heretofore stated the explicit legislative policy in the enactment of the Police Act is to "achieve and attain a higher degree of efficiency in the organization, administration, and operation of local police agencies with the end in view that peace and order may be maintained more effectively and the laws enforced with more impartiality. It is also the object of this act to place the local police service on a professional level." (Sec. 2, Republic Act No. 4864). We cannot conceive how such noble and lofty public purpose can be attained, if the precise and categorical requirements on the minimum qualifications for policemen are perfunctorily observed or openly disregarded. These qualifications relate to the very essence of the statutory purpose. Compliance with such requirements is not a matter of convenience.

And what is more, the Police Commission vested by the law with the power to promulgate rules and regulations pursuant to prescribed standards, for the implementation of the aforesaid Act, promulgated on April 1, 1968, Memorandum Circular No. 6, which states:

"Services of members of the police agencies who were provisionally appointed on or after September 8, 1966 who do not meet the minimum qualifications under the Police Act should be immediately terminated. They are entitled to all pay and allowances during the period of actual service rendered, unless such pay and allowances were disallowed for cause."

Such administrative or practical construction of the law, by the administrative agency entrusted with its implementation and enforcement must be accorded considerable weight.

WHEREFORE, the decision of the Court of First Instance of December 20, 1968 is hereby affirmed. Without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Makalintal, J., on official leave.

[1] Cuadra vs. Cordova, 103 Phil. 391, 394; Pinullar vs. President of the Senate, 104 Phil. 131, 135.

[2] Section 24(c) of Rep. Act No. 6040 provides: "Temporary Appointment. — A temporary appointment may be issued to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for the position to which he is being appointed, whenever a vacancy occurs and the immediate filling of the vacancy is urgently required in the public interest or such vacancy is not permanent, in the absence of eligibles actually and immediately available. Temporary appointments to permanent vacancies in the competitive service shall not exceed twelve months, and those to temporary vacancies shall terminate upon the return of the incumbent."

[3] University of the Philippines vs. Court of Industrial Relations, 107 Phil. 848; Atay vs. Ty Deling, 107 Phil. 1146; Azuelo vs. Arnaldo, 108 Phil. 293; Madrid vs. Auditor General, 108 Phil. 578; De la Torre vs. Trinidad, 108 Phil. 635.

[4] Quitaquit vs. Villanueva, 107 Phil. 1060, 1064.

[5] "Sec. 11. Qualifications for Permanent Appointments, Preference; Temporary Appointment. — Except as herein provided, no person shall be permanently appointed to any position in the local police force or agency unless he has qualified in an appropriate or police service examination. In the absence of civil service eligibles preference for appointment shall be given to candidates who have completed police training courses abroad sponsored by the NEC-AID or any other sponsoring agency, or the police training courses of the Philippine Constabulary School or the National Bureau training school accredited by the government, or have completed military trainee instructions, or are officers or enlisted men who have been honorably discharged from the Armed Forces of the Philippines.

"Where no civil service eligible is available provisional appointment may be made in accordance with Civil Service Laws and rules: Provided, That in case of a patrolman-appointee, he shall possess at least the general qualifications provided for in Section nine of this Act."

[6] Ramos vs. Romualdez, 32 SCRA 590, 594.

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