

RUEL P. LAMATA, PETITIONERS, RUEL P. LAMATA AND FLORENCIO DE LA CERNA, PETITIONERS-APPELLANTS, VS. HON. VICENTE N. CUSI, JR., JUDGE OF CFI DAVAO, AND HON. ELIAS B. LOPEZ, CITY M...

G.R. No. L-32619. October 31, 1972

Ponente: CONCEPCION, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/197f1109d065/>

CONCEPCION, C.J.:

Petition for review of a decision of the Court of First Instance of Davao.

Petitioners Ruel P. Lamata and Florencio de la Cerna were members of the police force of Davao City, holding appointments as patrolmen by the then Mayor Carmelo L. Porras, which appointments were approved by the Commissioner of Civil Service as provisional, under Sec. 24(c) of Rep. Act No. 2260. At the general elections in 1967, respondent Elias B. Lopez was elected mayor of Davao City. On or about May 1, 1968, Lamata and De la Cerna received communications from Mayor Lopez terminating their services effective June 1, 1968, upon the ground that their appointments were temporary in nature and that they were to be replaced by civil service eligibles. Soon after, or on August 15, 1968, Lamata and De la Cerna, as well as Esmeraldo Baco, a laborer-caretaker who had similarly been dismissed by Mayor Lopez, filed with the Court of First Instance of Davao a petition for mandamus against said mayor to compel him to reinstate them to their respective positions, and for damages. In due course, on June 28, 1969, said court rendered a decision dismissing the petition insofar as Lamata and De la Cerna were concerned, but ordering the reinstatement of Baco. Their motion for reconsideration of said decision having been denied, Lamata and De la Cerna filed the present petition for review on certiorari.

Although petitioners herein were dismissed by respondent Lopez upon the ground that they held their respective positions as patrolmen in a temporary capacity, it is no longer disputed that they held "provisional" appointments to said positions. We have repeatedly held that one holding a public office under a provisional appointment, he having the qualifications necessary for the office, although without the requisite civil service eligibility, is not a "temporary" official who may be dismissed at any time, but may remain in office up to not more than 30 days from receipt by the appointing official from the Commissioner of Civil Service of a certification of the availability of civil service eligibles or up to the appointment of such civil service eligibles.

Indeed, prior to its amendment by R. A. No. 6040, approved on August 4, 1969, Sec. 24(c) of R. A. No. 2260, otherwise known as the Civil Service Act of 1959, was of the following tenor:

"(c) Provisional Appointment. — A provisional appointment may be issued upon the prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto 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."

Implementing this provision, Sections 13 and 14 of Rule VI of the Civil Service Rules provided:

"SEC. 13. Whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and in the findings of the Commissioner there is no appropriate eligible at the time of appointment, the appointing officer may, upon prior authorization of the Commissioner, Provincial or City Treasurer, as the case may be, issue a provisional appointment 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 or classified service.

"SEC. 14. A provisional appointment shall in no case extend beyond 30 days from receipt by the appointing officer of the certification of eligibles."

Construing said Section 24(c) of R.A. No. 2260, in relation to these sections of the Civil Service Rules, We held, in *Piñero vs. Hechanova*[1]

"* * *. Even in the case of those holding provisional or probationary appointments (like the three above-named) the invalidity thereof can not be declared unless it is first shown that there were appropriate eligibles at the time they were appointed, and this requisite has not been established by evidence (Civil Service Rule VI, sections 13 and 14)."

This was followed by *Ferrer vs. Hechanova*,[2] from which We quote:

"Petitioner Ferrer, as stated, held only a provisional appointment at the time he was dismissed. A provisional appointment is good only until replacement by a civil service eligible and in no case beyond thirty (30) days from the date of receipt by the appointing officer of the certificate of eligibles (Sec. 24 [c], R. A. 2260; Rule VI, Secs. 13 and 14 of Revised Civil Service Rules; *Piñero vs. Hechanova*, supra)."

Then came *Ramos vs. Subido*,[3] in which this Court postulated:

"The position in question is under the classified service; Ramos accepted his latest appointment thereto, dated July 1, 1963, without having the requisite appropriate civil service eligibility for said position. Accordingly, his appointment can only be deemed provisional and good only until replacement by one holding such appropriate eligibility, in no case to extend more than thirty days from receipt of the appointing officer of the list of eligibles (*Ferrer vs. Hechanova*, L-24418, January 25, 1967)."

In the case at bar, it appears that no certification of eligibles to the positions held by Lamata and De la Cerna had been issued to respondent Lopez on or before the dismissal of said petitioners on June 1, 1968, or even subsequently thereto. What is more, Lopez admitted — in the Manifestation filed by him on February 20, 1971, by way of comment — answer to the petition herein — that he had not actually filled, until November 22, 1968, the vacancies resulting from the dismissal of Lamata and De la Cerna. Hence, the latter's dismissal is clearly invalid up to November 22, 1968.

Petitioners herein insist, however, that said dismissal is invalid up to the present because the appointments extended by respondent Lopez in favor of Patrolmen Geronimo Omila and Alexander Turingan have not, up to now, been approved by the Commissioner of Civil Service. This, however, is due merely to the pendency of the case at bar, the petitioners herein do not deny that Omila and Turingan possess the requisite civil service eligibility. As a consequence, the dismissal of petitioners herein was illegal only from June 1, to November 22, 1968, and respondent Elias B. Lopez should indemnify petitioners Ruel P. Lamata and Florencio de la Cerna in the amount of their salaries for said period, with interest thereon at the legal rate from November 22, 1968.

THUS MODIFIED, the decision appealed from should be as it is hereby affirmed in all other respects, with costs against respondent Elias B. Lopez.

It is so ordered .

Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.
Makalintal, J., on leave.

[1] L-22562, Oct. 22, 1966.

[2] L-24418, Jan. 25, 1967.

[3] L-26090, Sept. 6, 1967.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.