

**JORGE DELECTOR, PEDRO LADRERA, ALEJANDRO ALDAS,
ALEJANDRO AGUADO, AND MIGUEL AGNER,
PETITIONERS-APPELLANTS, VS. ANTONIO M. OGAYAN, IN HIS
CAPACITY AS MAYOR OF PALO, AND IN HIS P...**

G.R. No. L-31352. July 29, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review seeks the reversal of the decision of the Court of First Instance of Leyte (now Regional Trial Court), dismissing the petition for quo warranto which prayed for the ouster of respondents as policemen of Palo, Leyte, and for the petitioners' reinstatement to the same positions.

At the pre-trial hearing, the parties submitted the case for decision on the following agreed facts:

"1. That the petitioners are all duly appointed, have qualified and assumed office as Patrolmen of the Palo Police Department, Palo, Leyte, with corresponding items in the annual budget of the municipality and their appointment duly approved by the Civil Service Commission all having been appointed on January 4, 1964, except Miguel Agner who was appointed on July 16, 1965.

"2. That upon dismissal of petitioners from the police force of Palo, Leyte, on January 1, 1968, respondent municipal mayor appointed on the same date the other respondents as special agents of his office force of Palo effective this fiscal year 1968-1969.

"3. That petitioners and respondents (except respondent municipal mayor) are not civil service eligibles.

"4. That prior to the appointment by respondent municipal mayor of the other respondents as special agents of his office, there were no existing positions of special agents in his office and those positions were created upon his assumption of office as municipal mayor on January 1, 1968."

The respondent Judge Jesus N. Borromeo who is now Deputy Minister of Justice dismissed the petition, stating:

xxxx xxxx xxxx

"Thus, considering the undeniable fact that they are not civil service eligibles for the positions of municipal policemen, there should be no question that the dismissal of petitioners from the police force of Palo, Leyte, on January 1, 1968, cannot be legally assailable considering the well-known rule in this jurisdiction that a permanent appointment implies civil service eligibility, unless, of course, the position involved requires no such civil service eligibility (Sique vs. Rabaya, G.R. No. L-11717, Dec. 27, 1958). x x x"

Petitioners made the following assignment of errors in this petition:

I

THE TRIAL COURT ERRED IN HOLDING THAT THERE IS NO LAW THAT NO APPOINTING OFFICIAL CAN REPLACE NON-ELIGIBLES BY OTHER SET OF NON-ELIGIBLES.

II

THE TRIAL COURT ERRED IN HOLDING THE CIRCULAR REFERRING TO THE REPLACEMENT OF NON-ELIGIBLES BY THOSE CERTIFIED BY THE CIVIL SERVICE COMMISSION OF ELIGIBLES AS MERELY DIRECTORY AND HAS NO BINDING FORCE AND LEGAL EFFECT.

III

THE TRIAL COURT ERRED IN NOT DETERMINING WHETHER THE CIRCULAR OF THE CIVIL SERVICE COMMISSION REGARDING REPLACEMENT OF NON-ELIGIBLES IS FAIR, AND SOUND.

IV

THE TRIAL COURT ERRED IN DISMISSING THE PETITION.

With regard to the first assignment of error, petitioners contend that they cannot be replaced by non-eligibles as this is prohibited by Section 23, Article VI of the Civil Service Law and thus, as provisional appointees, their services cannot be terminated at will by the appointing officer, except upon certification of appropriate eligibles by the Civil Service Commission or by a subsequent appointment of eligibles to the position. (Petition, pp. 16-17, Rollo). Therefore, at least in the interest of public service, the petitioners state that they should be allowed to stay until eligibles are available. (Id., p. 18)

The contention is without merit. Petitioners are not provisional appointees. Section 24(c) of Republic Act No. 2260, the Civil Service Act of 1959 defines a provisional appointment as follows:

xxx xxx xxx

"(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."

xxx xxx xxx

There is absolutely no showing that the petitioners possess the requirements for appointment to a regular position in the competitive or classified service and that whatever eligibility they possess is not appropriate for the positions to which they were appointed. What the law considers a provisional appointee is one with a civil service eligibility but different from that which is appropriate for the position to which he was appointed. Since petitioners did not possess any civil service eligibility, their appointments are considered temporary. It is a settled rule that temporary appointees may be terminated at any time even without cause. They have no fixed tenure. (Abrot v. Court of Appeals, 116 SCRA 468) The Civil Service Commission cannot even legally approve their appointments as provisional as this act would constitute an unwarranted invasion of the discretion of the appointing power. (Matural v. Maglana, 113 SCRA 268)

This being the law, there is no necessity for us to rule on the other contentions of the petitioners.

WHEREFORE, the petition is hereby dismissed for lack of merit, with costs against the petitioners.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.
Vasquez, J., on leave.

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