

**EMILIANO PIELAGO, ET AL., PETITIONERS, EMILIANO PIELAGO,
PETITIONER-APPELLANT, VS. RECAREDO ECHAVEZ, ET AL.,
RESPONDENTS-APPELLEES.**

G.R. No. L-26600. May 29, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from a decision of the Court of First Instance of Cebu dismissing petitioner's action for mandamus and certified by the Court of Appeals to this Court as involving purely a question of law.

The Court of Appeals, in its certification resolution, gives the following background facts: "(O)riginally, there were four petitioners in this action for mandamus. But only Emiliano Pielago now remains as the lone petitioner-appellant.

"Pielago was designated as member of the municipal police of Aloguinsan, Cebu, on December 1, 1952 by former Municipal Mayor Araceli Gantuangco.

"On January 15, 1960, Pielago, together with others, was dismissed from the service by respondent Municipal Mayor Recaredo Echavez, who succeeded Gantuangco as Mayor, by means of a letter of termination tendered to petitioner which reads:

"This is to inform you that your designation as municipal policeman for Aloguinsan, Cebu, will be terminated at the close of office hours on January 15, 1960, you not being a civil service eligible and it not being my desire to renew your appointment.

Very truly yours,

(Sgd.) RECAREDO ECHAVEZ

Municipal Mayor'

"Together with the original three petitioners, Emiliano Pielago, filed an action for mandamus with the Court of First Instance of Cebu against respondents Mayor Echavez, the Municipal Treasurer, in their official capacity, the Municipal Council, and the Municipality of Aloguinsan, Cebu, wherein he sought judgment declaring his removal illegal. He asked that he be reinstated to his former position as policeman, the necessary appropriation for the purpose be made, his salaries paid, and that he be awarded moral and exemplary damages as well as attorney's fees, expenses of litigation, with costs against respondents.

"The Court of First Instance of Cebu dismissed the petition. The petitioner took the case to us on appeal.

"The petitioner is admittedly not a civil service eligible. But he took the qualifying patrolman examination given by the Civil Service Commission on February 27, 1960. He obtained a rating of 62.7%." (This was considerably short of the passing grade of 70%. Petitioner testified that he filed a petition for recorection and reconsideration with the Civil Service Commission, but admits that up to the time of the filing of his brief on

appeal more than three and a half years later, he had not received any reply from the said office.[1]

The stipulation of facts submitted to the trial court by the parties and the additional testimonial evidence of petitioner and of respondent mayor as set forth in the judgment appealed from furnish us the following additional relevant facts:

Soon after the filing of petitioner's action in March 1960, the trial court directed the dismissal of the case insofar as co-petitioners Tomas Dayanan and Cirilo Arante were concerned on the ground that respondent mayor had reinstated them to their positions of municipal policemen. From the unrefuted testimony of respondent mayor as reproduced in the trial court's decision, when he could not find enough civil service eligibles as replacements for the original four petitioners, he had the Chief of Police ask them if they wished to be reinstated; Dayanan and Arante accepted the reinstatement (the latter subsequently passed the qualifying examination); but petitioner refused the offer, because he preferred to continue with the present suit. The third co-petitioner, Telesforo Baritua, withdrew his suit, because he was moving out to settle in Palompon, Leyte.

At any rate, respondent mayor grounded his main defense to the action on the fact that petitioner's service was inefficient and unsatisfactory, petitioner having been administratively charged and found guilty in 1958 of infidelity in the custody of a prisoner and petitioner could not therefore invoke the protective mantle of section 23 of the then newly enacted Civil Service Act of 1959 (Republic Act 2260).

The question of law certified by the appellate court is "whether or not the removal is illegal under these circumstances." Petitioner's lone assignment of error is of the same tenor, to wit, that the trial court "erred in holding that the dismissal of the petitioner from his position as municipal policeman is legal and justifiable and in consequently dismissing the petition."

The crux of the question depends for resolution upon the proper interpretation of the protective clause for non-eligibles in the fourth paragraph of section 23 of the Civil Service Act enacted on June 19, 1959 that:

"Qualification in an appropriate examination shall be required for appointment to positions in the competitive or classified service in accordance with the civil service rules, except as otherwise provided for in this Act: Provided, That whenever there is a civil service eligible available for appointment, no person who is not such an eligible shall be appointed even in a temporary capacity to any vacant position in the competitive or classified service in the government or in any government-owned or controlled corporation: Provided, further, That non-eligible employees who, upon the approval of this Act, have rendered five years or more of continuous and satisfactory service in classified positions and who meet the other qualifications for appointment to their positions, shall, within one year from the approval of this Act, be given qualifying examinations in which their length of satisfactory service shall be accorded preferred consideration: Provided, further, That those who fail in those examinations as well as those who fail or refuse to take the examinations when offered shall be replaced by eligibles: x x x"[2]

For under the cited section, the Court has held a non-eligible appointee who has already more than five years of service to his credit, even though his appointment be of a temporary character, to have "acquired a right to continue holding his position until three conditions have been complied with, namely, (1) he must have been given a qualifying examination within one year from said approval, (2) he either failed in said examination or failed or refused to take it, and (3) he could be replaced only by one who has the requisite or appropriate civil service eligibility. Without these conditions, he had the right to continue in his position even permanently."[3]

On the other hand, the Act requires as a qualification that the non-eligible employee should "upon the approval of this Act, have rendered five years or more of continuous and satisfactory service." Now, where the employee had more than five years of service prior to the enactment of the Act on June 19, 1959 - seven years in the case of

petitioner - does the requirement of continuous and satisfactory service apply to the employee's entire length of service or is it sufficient that at least five of those years have been continuous and satisfactory?

Petitioner's contention is that he met the qualification because he had rendered at least five years of continuous and satisfactory service, for from December 1, 1952 when he commenced his service up to April 5, 1958, when the prisoner in his custody escaped (for which he was charged administratively and found guilty, after investigation under Republic Act 557 although he held merely a temporary appointment, by the Municipal Council which imposed a penalty of one month's suspension) more than five years had elapsed.[4]

The Court rejects petitioner's contention and sustains the trial court's ruling that by virtue of this blot on his service record, having been found by the Municipal Council to be inefficient in his service as a policeman, he did not meet the qualifications for appointment to the position. In other words, to qualify for retention in the service, the non-eligible employee, at the time of the approval of the Act, must have "rendered five years or more of continuous and satisfactory service." This requirement plainly applies to the employee's entire length of service at the time of the Act's approval, where such service exceeded the minimum pre-Act employment of five years. The entire length of service actually rendered must be continuously satisfactory and not only a part thereof. For the Act does not countenance inefficiency or negligence in the service at any time nor does it set a time limit to efficiency and satisfactory service for a certain period and allow inefficiency or unsatisfactory service after that period.

This construction is supported by the Act's further provision that such non-eligible employees who meet its requirement of "five years or more of continuous and satisfactory service. . . . shall, within one year from the approval of this Act, be given qualifying examinations in which their length of satisfactory service shall be accorded preferred consideration." Thus, an employee with seven years of continuous satisfactory service would be accorded preferred consideration as against an employee with the minimum five years' satisfactory service. Petitioner's interpretation that he should qualify for the Act's protective clause since at least five years of his service have been satisfactory obviously does not meet the Act's express requirements, which were meant to protect only those non-eligibles who had dedicatedly and uninterruptedly rendered five years or more of satisfactory service, by giving them a one-year's period to pass the qualifying examinations and be absorbed in the civil service. Here, petitioner, after having rendered five years of continuous and satisfactory service, committed a serious breach of duty for which he was administratively found guilty and his penalty of suspension ended on August 27, 1958,[5] less than a year before the enactment of the Act on June 19, 1959. The most liberal construction of the Act's requirement, which would condone or overlook unsatisfactory service of the employee at the early part of his employment if he thereafter rendered at least five years of continuous and satisfactory service before the Act's approval would be of no avail to petitioner. Finally, petitioner's failure to pass the qualifying examinations effectively bars his claim to reinstatement.

ACCORDINGLY, the judgment appealed from is hereby affirmed. Without costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Barredo, and Villamor, JJ., concur.
Castro, J., on leave.

[1] Petitioner's brief, p. 2

[2] Emphasis furnished.

[3] *Azur vs. Prov. Board*, G.R. No. L-22333, Feb. 27, 1969, 27 SCRA 50; see also *Manay vs. Buenaventura*, G.R. No. L-24097, Nov. 18, 1967, 21 SCRA 962.

[4] Petitioner's brief, p. 9.

[5] Exh. 2; Petitioner's brief, p. 9.

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