

DOMINGO MANAY, PETITIONER-APPELLANT, VS. A.L. BUENAVENTURA, ACTING COMMISSIONER OF CIVIL SERVICE, RESPONDENT-APPELLEE.

G.R. No. L-24097. November 18, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a decision of the Court of First Instance of Manila to the Court of Appeals but certified by the latter to this Court as a case involving only pure questions of law.

As shown by the stipulation of facts and its annexes, Anastacio Revilla was appointed as Chief of Police of Santa Cruz, Marinduque in 1945; after a term as deputy assessor (from March 1, 1947 to June 30, 1953), Revilla was re-appointed as Chief of Police on 1 July 1953; and served as such since then, his latest appointment being that of 16 July 1959 as temporary[1] Chief of Police, which was attested as such by the Commissioner of Civil Service on 5 February 1960; on 27 February 1960, he took the patrolman examination (Qualifying) and passed it.

On 16 January 1960, however, the Municipal Mayor of Santa Cruz appointed the petitioner-appellant, Domingo Manay, as Chief of Police and Anastacio Revilla as Police Sergeant. On the same day, the appointees took their oaths of office and assumed their respective positions.

On 30 October 1960, the respondent Commissioner of Civil Service, in a return indorsement to the Municipal Mayor, approved as provisional[2] the appointment of Anastacio Revilla as Chief of Police, effective 16 July 1959; informed the mayor that Revilla was entitled to retention and not replaceable even by an appropriate civil service eligible, for having served continuously as Chief of Police for more than five (5) years prior to the approval on 19 June 1959 of the Civil Service Act, Republic Act No. 2260; and returned without action Revilla's appointment as Sergeant, for being a demotion.

On 4 March 1961, Revilla protested with the respondent Commissioner the appointment of Manay as Chief of Police on the ground of non-observance of the rules on seniority and merit and gross discrimination; on 15 March 1961, the Municipal Mayor informed the Commissioner that protestant Revilla was physically unfit to perform the work of a police officer because he suffers from a limping gait and subject to seasonal attacks of rheumatism and has failed to submit a physical examination certificate.

Acting upon Revilla's protest, the Commissioner found both Manay and Revilla to be eligible for appointment as Chief of Police. However, the Commissioner approved Manay's appointment as Chief of Police, not as permanent, but only "for the period of actual services rendered x x x," saying:

"It would appear that at the time Mr. Revilla was replaced as Chief of Police by Mr. Manay, the former had rendered more than five years of continuous and satisfactory service prior to June 19, 1959, the date of the approval of R. A. 2260. He had, therefore, a right of retention to the position (Chief of Police) he was holding on June 19, 1959, pursuant to Paragraph 4 of Section 23 of Republic Act 2260, which provides 'x x x That

non-eligible employees who, upon the approval of this Act have rendered five years of (sic) more of continuous and satisfactory service in Classified position and who meet the other qualifications for appointment to their position, shall be accorded preferred consideration: Provided, further, that those who fail in these examinations as well as those who fail or refuses to take the examinations when offered shall be replaced by eligibles: x x x." For this reason and as Mr. Revilla took the Patrolman (Q) examination held on February 27, 1960 and passed it it would seem that this demotion from Chief to Sergeant of Police is not in order."

Manay requested a reconsideration but the Commissioner denied it on 4 October 1962.

Unsatisfied, petitioner-appellant Domingo Manay filed in the Court of First Instance of Manila a petition for certiorari and mandamus (docketed as Civil Case No. 52149) seeking the annul-ment of the action taken by the Commissioner of Civil Service and to have his (Manay's) appointment approved as permanent.

The trial court denied the petition and Manay interposed and appeal to the Court of Appeals. The appellate court, as aforesaid, certified the case to us.

We find no merit in this appeal. No adequate factual premises exist for the petitioner-appellant's charge that respondent Civil Service Commissioner acted with grave abuse of discretion in disregarding the alleged physical unfitness of Revilla. While the respondent passed the matter sub silencio but had approved Revilla's appointment as Chief of Police as provisional only, the records do not show why the appointment was approved as provisional, and it cannot be said that the respondent had, in fact, disregarded Revilla's physical condition and had abused his discretion. Anyway, as pointed out by the Solicitor General, the alleged disability could hardly be true, because Revilla not only served as Chief of Police for more than five years, but was appointed by the protesting Mayor as Police Sergeant, a position that demands more physical exertion on the part of the appointee.

Petitioner-appellant argues that Revilla's protest is already barred by laches for having been filed after more than one year from the time the petitioner was appointed as Chief of Police on 16 January 1960. The cases relied upon by him (*Madrid vs. Auditor General*, 108 Phil. 578; *Agapuyan vs. Ledesma*, L-10535, 25 April 1957) do not apply in the present case, because Revilla's protest was an unnecessary act; as early as 30 October 1960, the Commissioner had favorably acted upon Revilla's appointment as Chief of Police and disapproved his demotion to Sergeant. Revilla could not have brought suit in Court while the Civil Service Commissioner had not acted on the appointment of Manay.

Nor may estoppel for accepting the position as Sergeant operate to block Revilla in assuming the position of Chief of Police because when Manay was appointed as Chief of Police on 16 January 1960, he went on leave and Revilla continued to discharge the duties of Chief of Police.

According to the petitioner, he has passed the probationary period of six months and, on this account, his appointment should already be permanent. But, the law which the respondent Commissioner implemented, as was his duty to do, gives preference to Revilla.

"Qualifications 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 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 x." (Par. 4, Sec. 23, Republic Act 2260) (Underscoring supplied)

Conversely, if Manay's appointment is approved as permanent, such approval would contravene the above legal provision.

Since, by statute, the petitioner-appellant possesses an inferior right to the position, a ruling as to the availability of the remedy of mandamus to compel the respondent to approve the appellant's appointment as permanent is unnecessary, petitioner having no right to permanence anyway.

For the foregoing reasons, the Appealed decision is hereby affirmed, with costs against the appellant Domingo Manay.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] per Stipulation of Facts.

[2] Annex B-4 to Stipulation of Facts.

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