

PABLO CUNETA, ETC., ET AL., PETITIONERS, VS. THE HON. COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. L-13264. February 28, 1961*

Ponente: BAUTISTA ANGELO, J.

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On February 1, 1956, the Municipal Board of Pasay City approved Resolution No. 36 empowering the city mayor to reorganize the various departments and offices of the city government to accomplish efficiency and economy, and to promote, transfer, demote or lay off, as a consequence thereof, city officials and employees, pursuant to existing civil service law and regulations. To implement said resolution the city mayor prepared what is now known as Reorganization Plan No. 5 for the police department, which was subsequently submitted to and approved by the municipal board on March 22 of the same year. This reorganization plan reduced from 92 to 12 the number of detectives in the aforesaid department.

Upon approval by the municipal board of said reorganization plan, the city mayor, under date of March 25, 1956, sent a communication to the chief of police directing the latter to screen the list of detectives and select the 12 who should be reappointed and retained in the service. Accordingly, the selection was made and the recommendation submitted.

Appellees herein were among those not recommended for reappointment. They were notified of their separation from the service effective as of the close of office hours of April 25, 1956, without prejudice to their re-appointment should appropriate funds be available. The city treasurer and city auditor, upon being furnished with copies of the notice served upon appellees, refused to pay and pass in audit their salaries after April 25, 1956.

On June 6, 1956, appellees filed before the Court of First Instance of Rizal, Pasay Branch, a mandamus proceeding to command the respondent city mayor to reinstate them to their former rank and positions; to command the city mayor, city treasurer and city auditor to pay their salaries accruing from the time they were illegally removed from their office until they are actually reinstated in the service, and to declare their removal from their rank and positions as illegal.

After trial the lower court found appellees' separation from the service illegal and rendered judgment against appellants. On appeal to the Court of Appeals, the judgment was affirmed. Appellants come before this Court assigning as errors the findings and conclusions of the Court of Appeals.

The issues raised by appellants in their assignments of error may be boiled down as follows: that their original petition does not state a cause of action; that it does not dispute the validity of Resolution No. 36 which authorizes the reorganization of the various departments and offices of the government of Pasay City; that Reorganization Plan No. 5 approved by the municipal board of said city to implement said resolution is valid; that appellees had been legally separated because their positions had been properly eliminated either in, said plan or in the budget submitted in connection therewith.

There is no merit in this appeal. We find that, under the law and precedents on the matter, appellees were improperly eliminated, and, hence, are entitled to reinstatement.

It should be noted that appellees at the time of their removal were holding the positions of detectives who performed the duties of peace officers and such other duties, as may be assigned to them by the chief of police, or as may be prescribed by law or ordinance. As part of the regular police force, they belonged to the unclassified class of the civil service, and in view of the nature of their office, their removal can only be accomplished in accordance with law, particularly paragraph 2, section 20, article IV, Republic Act No. 183, which provides:

"All other officers and employees of the city whose appointment is not otherwise provided for by law shall be appointed by the Mayor upon the recommendation of the corresponding city department head in accordance with the Civil Service Law, and they shall be suspended or removed in accordance with said law."

Our Constitution also protect their tenure of office when it postulates that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law" (Section 4, Article XII). And the mode and manner by which they may be suspended or removed from office are also prescribed in the law, particularly section 1, Republic Act No. 557, which in part provides:

"Section 1. Members of the provincial guards, city police and municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases, charges shall be preferred by the provincial governor in matters against any member of the provincial guards, the city mayor in cases against a member of the city police, and the municipal mayor in cases involving a member of the municipal police, and investigated by the provincial board, the city or municipal council, as the case may be, in public hearing, and the accused shall be given opportunity to make their defense. * * * "

Since appellees were removed from office in disregard of the safeguard prescribed by law for they were separated without any formal charge having been filed against them and, if any, without having been given an opportunity to defend themselves, it is clear that their petition sets forth a good cause of action.

It is true that the positions which appellees were holding were eliminated from the reorganization plan adopted by the city mayor in line with the authority given him to reorganize the government by the municipal board, but said plan has no valid effect because it was never submitted to the President for approval as required by Executive Order No. 175 series of 1938.[1] Nor can this void be obviated by the fact that the budget corresponding to said plan was approved by the office of the President since such approval cannot imply an express presidential sanction of the overall reorganization plan. We concur in the following comment of the Court of Appeals:

"We find no merit in this contention. A public office should not be deemed abolished by mere implication. In other words, by the mere approval by the office of the President of the budget of Pasay City, which was approved by the Municipal Board on June 25, 1956, it should not be assumed that the President had also given his express approval to the Reorganization Plan No. 5 which does not appear to have ever been submitted for his consideration."

Wherefore, we affirm the decision appealed from, with out pronouncement as to costs.

Bengzon, Acting C. J., Padilla, Reyes, J. B. L., Barrera, Paredes and Dizon, JJ., concur.

[1] "No position in any city or municipal police force or in the provincial guards should be abolished nor may the salary corresponding thereto reduced without the approval of the President of the Philippines."

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