

EUGENIO R. RAMOS, PETITIONER-APPELLANT, VS. EDUARDO Z. ROMUALDEZ, IN HIS CAPACITY AS SECRETARY OF FINANCE; MISAEL P. VERA, IN HIS CAPACITY AS COMMISSIONER OF INTERNAL REVENUE AN...

G.R. No. L-27946. April 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The case for petitioner in this appeal from a decision of the then Judge, now Justice of the Court of Appeals, Jose N. Leuterio, dismissing his suit for mandamus to compel respondent, the then Secretary of Finance Eduardo Romualdez, to reinstate him in his position as Special Investigator of the Bureau of Internal Revenue, was sought to be presented in the strongest possible light by his counsel. What he would have the judiciary do is to declare void the termination of his services as a removal without cause contrary to the security of tenure guarantee of the Constitution. It was not disputed though that he lacked civil service eligibility. Unfortunately for him, such admitted fact had consequences in law of the most adverse character. It would thus appear that formidable indeed were the odds that respondent had to face in this proceeding. Insurmountable may be a more appropriate term, considering the authoritative decisions to which reference will hereafter be made. We have no choice but to affirm the decision of the lower court.

The background facts are therein set forth thus: "On April 15, 1963, the petitioner was appointed Special Investigator R-36 of the Bureau of Internal Revenue by the then Secretary of Finance, Hon. Rodrigo D. Perez, Jr. * * * The Office of the President in a letter declared the position primarily confidential in nature and placed in the exempt class. Petitioner is not a civil service eligible. In a letter dated August 5, 1966, * * * the respondent Commissioner of Internal Revenue informed the petitioner that his services were terminated as of that date in accordance with Section 671 (1) of the Revised Administrative Code and Section 5, Article 11 of Republic Act No. 2260. The petitioner wrote to the Commissioner of Internal Revenue on December 3, 1966, * * * contending that the dismissal was illegal and unjustified and requesting that he be reinstated to his original position within 15 days. A similar letter, dated December 23, 1966, was addressed to the respondent Secretary of Finance, * * *. Both letters were ignored * * *. Hence this action." [1]

Why the petition had to be dismissed was explained in the decision thus: "Since the petitioner here is not a civil service eligible, he cannot be extended neither a permanent nor a provisional appointment. His appointment falls under paragraph 6, and that is a temporary appointment which is for a limited period. A temporary appointee can always be dismissed without notice and without cause by the appointing power. The fact that petitioner's appointment is described as probational and that it was approved as such by the Commissioner of Civil Service cannot give him the status of permanent or probational appointment because such appointment and such approval is a violation of the provisions of the Civil Service Act. Petitioner's appointment as 'probational' and its approval by the Commissioner of Civil Service were void from the very beginning as contrary to the Civil Service Law."

Precision in legal terminology would seem to require that instead of considering his separation from the service as one of dismissal, it should be characterized as termination. The holding of the lower court that the appointment must perforce be temporary due to the absence of any civil service eligibility on the part of petitioner is legally impeccable. We have always ruled thus since the case of *Orais v. Ribo*,^[2] Decisions subsequently rendered with a similar conclusion are many and varied.^[3] In the latest case in point, *Valdez v. Gutierrez*,^[4] this Court, speaking through Justice B. L. Reyes, restated the principle thus: "Appellant's appointment as Police Head, even if valid, was temporary; being a non-eligible, Valdez could not be permanently appointed to a position in the classified service. The appointing power, respondent Mayor, could validly terminate Valdez' appointment, and did so terminate it upon the appointment of Pedro P. Cruz, Jr., vice Vitaliano B. Valdez, a non-eligible whose services were terminated." As declared at the outset of this decision, the decision of the lower court, being in accordance with our authoritative pronouncements, cannot be set aside.

This is not to say that petitioner in this appeal did not exert the most valiant efforts to escape from the binding force of the above decisions. His counsel would lend plausibility to such a plea by characterizing his appointment as provisional rather than temporary and by stressing its confidential character. Neither ground is impressed with sufficiently persuasive character to justify a reversal of this decision now on appeal.

1. Petitioner would seek to impart a certain degree of permanence to his appointment by characterizing it as provisional rather than temporary. As set forth in his brief: "[It] is not con-tested that except for this requisite he otherwise meets the requirements for appointment to the said regular position in the competitive service. His stay therein therefore should continue only up to his replacement by eligibles, and in no case 30 days from the receipt by the appointing officer of the certificates of eligibility. Since the grounds stated in the letter of termination are not valid grounds for dismissal of a provisional appointee, he should be reinstated back to said position."^[5] In support, he would cite *Ferrer v. Hechanova*,^[6]

As noted in the brief of respondent Romualdez, however, what the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than the appropriate one for the position to which he was appointed. That was so declared in the aforesaid case of *Ferrer v. Hechanova*. It would appear, therefore, that while petitioner did seek to lend cogency and force to such an assertion, he could not be deemed to have succeeded. For, as need not be repeated, the absence of any civil service eligibility on his part stood in the way. It was an obstacle that could not be hurdled.

2. He would likewise impugn his separation from the service by respondent Romualdez on the ground that the position he held of Special Investigator in the Bureau of Internal Revenue is, confidential. He does not ignore our holding in *Piñero v. Hechanova*^[7] to the effect that since the enactment of the Civil Service Act,^[8] what determines whether a position is primarily confidential does not depend on an executive pronouncement to that effect but the nature of the position. Why he would consider that his duties were of that character was sought to be justified by him by enumerating them: "1. Conducts confidential investigation of violations of Internal Revenue Laws by specified taxpayers; 2. Examine books of accounts to find out discrepancies or anomalous entries and submits confidential report to the Commissioner or Deputy Commissioner; 3. Performs surveillance work to detect collusion or connivance between employees and taxpayers; 4. Conducts confidential investigation and inquiries on the whereabouts of files and determine and pinpoint official and employees responsible therefore; 5. Performs such other confidential assignment or duties which may be assigned from time to time."^[9]

Again, while not inherently unpersuasive, such mode of reasoning, however, ignores the fact that precisely the confidential character therein stressed requires that his relationship to the appointing power be impressed with that degree of "close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust" * * *.^[10] Here,, petitioner was appointed by the then Secretary of

Finance Rodrigo D. Perez. The assumption then, under his own view, was that it was that, department head who reposed the requisite degree of confidence in him. With the new administration and necessarily so a new secretary of finance, it must likewise be equally assumed that the new incumbent, respondent Romualdez, was not to be denied the opportunity of choosing a man of his choice for the confidential position in question.

Even if, however, the confidential character of the position in question be accepted, petitioner still had not thereby adduced sufficient justification for reversing the lower court. For he apparently would consider his separation as one of removal which, of course, must be for cause in accordance with the constitutional protection to all civil service personnel whether in the classified or unclassified service, rather than termination, which it actually was. A recent decision, *Ingles v. Mutuc*,^[11] the opinion being penned by the present Chief Justice, argues against such a stand. Thus: "This should not be misunderstood as denying that the incumbent of a primarily confidential position holds office at the pleasure only of the appointing power. It should be noted, however, that when such pleasure turns into displeasure, the incumbent is not 'removed' or 'dismissed' from office — his 'term' merely 'expires', in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and can not be deemed 'removed' or 'dismissed' therefrom, upon the expiration of said term. The main difference between the former — the primarily confidential officer — and the latter is that the latter's term is fixed or definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this event takes place, the latter is not 'removed' or 'dismissed' from office — his term has merely 'expired'."

WHEREFORE, the decision of the lower court of June 27, 1967 is affirmed. Without pronouncement as to costs.

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

[1] Decision of the Court of First Instance of Manila, June 27, 1967.

[2] 93 Phil. 985 (1953).

[3] *Paña v. Medina*, 94 Phil. 103 (1953); *Manigras v. De Guzman*, 94 Phil. 245 (1954); *Inocente v. Ribo*, 94 Phil. 652 (1954); *Amora v. Bibera*, 99 Phil. I (1956); *Cayabyab v. Cayabyab*, 101, Phil. 681 (1957); *Quiatchon v. Villanueva*, 101 Phil. 989 (1957); *University of the Philippines v. CIR*, 107 Phil. 848 (1960); *Montero v. Castellanes*, 108 Phil. 744 (1960); *Taboada v. Municipality of Badian*, L-14604, May 31, 1961, 2 SCRA 412; *Flores v. Cordova*, L-15071, Sept. 26, 1961; 3 SCRA 105; *Phil. Land-Air-Sea Labor Union v. Court*, L-17950, August 31, 1964, 11 SCRA. 723; *Hojilla v. Mariño*, L-20574, Feb. 28, 1965, 13 SCRA 293.

[4] L-25819, May 22, 1968, 23 SCRA 661.

[5] Brief for the Petitioner-Appellant, pp. 15-16.

[6] L-24418, Jan. 25, 1967, 19 SCRA 105.

[7] L-22562, Oct. 22, 1966, 18 SCRA 417.

[8] Republic Act No. 2216 (1959).

[9] Brief for the Petitioner-Appellant, p. 6.

[10] *De los Santos v. Mallare*, 87 Phil. 289 (1950).

[11] L-20390, Nov. 29, 1968, 26 SCRA 171.

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