

LEONARDO DIAZ, ET AL., PETITIONERS AND APPELLEES, VS. FELIX P. AMANTE, RESPONDENT AND APPELLANT.

G.R. No. L-9228. December 26, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Leonardo Diaz and Alberto Aguilar filed a petition for mandamus in the Court of First Instance of Negros Occidental against Felix P. Amante in his capacity as Mayor of Bacolod City to compel the latter to reinstate them to their positions as members of the police force of said city.

The trial court, after hearing, rendered judgment ordering the respondent to reinstate petitioners as prayed for and to pay them (a) their unpaid salaries from August 16, 1951 up to the date of their reinstatement; (6) the sum of P5,000.00 as moral damages; (c) the sum of P2,000.00 as exemplary damages; and (d) to pay the costs of the proceedings. Respondent took the case on appeal to this Court on the ground that the only issue involved is one of law.

Leonardo Diaz was given a temporary appointment as third class patrolman on July 23, 1946 with an annual salary of P480.00. On October 1, 1946, he was given a d the qualifying examination for patrolman with a rating of 83%. Alberto Aguilar is not a civil service eligible but on September 8, 1949 he was appointed as patrolman effective July 1, 1949. On February 8, 1950, he was promoted to second class detective, and when he was dismissed on August 15, 1951, he was a first class detective. He is an old veteran, having been a guerrilla under Lt. Col. Salvador Abcede.

On August 15, 1951, both Diaz and Aguilar were notified by respondent of their separation from the service effective at the close of business hours of said day for lack of trust and confidence upon the recommendation of the chief of police. With regard to Aguilar, he was separated on the additional ground of immorality and of maintaining a house of prostitution. His position was filled by a civil service eligible on August 16, 1951. As a justification for the action he has taken against petitioners, respondent invoked the provisions of Executive Order No. 264 promulgated by President Quezon on April 1, 1940 believing that petitioners as detectives who occupy confidential positions could be separated upon a moment's notice for lack of trust and confidence, and his authority to dismiss them was sustained by the Executive Secretary who in an indorsement intimated that the removal of a detective from the service for lack of confidence was lawful. His action was also sustained by a provincial circular issued on April 3, 1954 by the Executive Secretary confirming the propriety of his action.

With regard to petitioner Diaz, who admittedly was a civil service eligible and was extended on more than one occasion a permanent appointment as member of the police force of Bacolod City, there is no question that his dismissal was illegal for having been made in a manner contrary to the procedure prescribed in Republic Act No. 557.[1] Executive Order No. 264 is no longer in force, the same having been impliedly repealed by said Act. Thus, in *Mission vs. Del Rosario*, 94 Phil., 483; 50 Off. Gaz., No. 4, 1571, this Court said: "It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for

any of the grounds enumerated in Republic Act No. 557, and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act."

A different consideration should be made with regard to petitioner Aguilar for it appears that he was not a civil service eligible even if he was extended several appointments as detective or patrolman by the City Mayor of Bacolod, for not being a civil service eligible, he is not qualified for a permanent appointment. Thus, in one case, this Court said: "In accordance with Section 682 of the Revised Administrative Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for a period of three months and not more." (Pana, et al. vs. City Mayor, et al., 94 Phil., 103; 50 Off. Gaz. [1] 146).[2] The case of Aguilar comes squarely within the purview of this ruling.

The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of P7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. U26), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision, but we believe that the sum of P5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of P2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to P1,000.00.

Wherefore, the decision appealed from is hereby modified as follows: respondent, or the incumbent Mayor of Bacolod City, is ordered to reinstate petitioner Leonardo Diaz as prayed for; respondent Amante is ordered to pay petitioner Diaz his unpaid salaries from August 16, 1951 up to the date of his reinstatement and the sum of P1,000.00 as exemplary damages. In all other respects, the decision appealed from is hereby reversed. With costs against respondent.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Judgment reversed with modifications.

[1] Uy vs. Rodriguez, 95 Phil., 493; 50 Off. Gaz., No. 8, pp. 3574-76; Abella vs. Rodriguez, 95 Phil. 289; 50 Off. Gaz., No. 7, pp. 3039-41; Mission vs. Del Rosario, 94 Phil., 483; 50 Off. Gaz., No. 4, pp. 1571; Palamine vs.

Zagado, 94 Phil., 494; 50 Off. Gaz., No. 4, pp. 1566-67.

[2] See also Reyes, et al. vs. Dones, et al., 103 Phil., 884; 56 Off. Gaz. (3) 509.

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