

**JAIME HERNANDEZ, SECRETARY OF FINANCE, ELEUTERIO CAPAPAS, COMMISSIONER OF CUSTOMS, JAMES H. KEEFE, ACTING DIRECTOR OF SECURITY, AND JUAN C. PAJO, EXECUTIVE SECRETARY, PETITIONER...**

*G.R. No. L-17287. June 30, 1965*

Ponente: REGALA, J.

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**REGALA, J.:**

Epifanio Villegas, a lawyer and civil service eligible, was appointed Director for Security of the Bureau of Customs, with compensation at P6,000, effective November 1, 1955. In 1956, he was sent to the United States to study enforcement techniques and customs practices under the technical assistance program of the National Economic Council and the International Cooperation Administration.

Villegas returned to the Philippines in June, 1957. Shortly thereafter, he was temporarily detailed to the Arrastre Service vice Eleazar Manikan and, in his stead, James Keefe was designated Acting Director for Security. While he was acting Arrastre Superintendent, however, Villegas continued receiving his salary as Director for Security and, when the salary was increased from P6,000 to P7,017.60, he also received the corresponding salary adjustment.

On January 9, 1958, Secretary of Finance Jaime Hernandez proposed to the Office of the President the permanent appointment of Villegas as Arrastre Superintendent, stating in his letter that "this (the proposed appointment) involves a change of designation and status from Director for Security which is confidential in nature to Arrastre Superintendent, a classified position." A few days later, the appointment of James Keefe to the position of Director for Security was likewise proposed.

On January 14, 1958, Executive Secretary Juan C. Pajo advised Secretary Hernandez that the President had approved the proposed appointments of Villegas and Keefe. Accordingly, Villegas and Keefe's appointments, effective January 1, 1958, were prepared and later signed by Secretary Hernandez. As the Court of Appeals observed in its decision, "In one of the appointments, defendant Keefe was promoted to the position of Director for Security \* \* \* and in the other plaintiff was demoted to the rank of arrastre superintendent." (*Italic supplied*)

It appears that Villegas did not know of his appointment and that of Keefe until February 28, 1958. On this day, he learned that Keefe was being paid the salary for Director for Security and, on further inquiry, found that he had been appointed Arrastre Superintendent- On March 3, 1958, therefore, he served notice on Customs Commissioner Eleuterio Capapas that he was resuming the duties and functions of his office as Director for Security. He also wrote the Auditor General, Secretary Hernandez and Commissioner Capapas, the Budget Commissioner and the Civil Service Commissioner, asking them to disapprove the promotional appointment of Keefe to the post of Director for Security.

When all else failed, Villegas filed this action for quo warranto in the Court of First Instance of Manila. The court

gave judgment for Villegas with right to collect back pay as Director for Security from January 1, 1958. Its decision was subsequently affirmed by the Court of Appeals.

The Secretary of Finance, the Customs Commissioner, the incumbent Director for Customs Security and the Executive Secretary have appealed to this Court raising the following issues: (1) Whether the office of Director for Security in the Bureau of Customs is a primarily confidential position, and (2) whether the Director for Security can be transferred to another position without cause. Their theory is that since the work of the Director—which has been delegated to him by the Customs Commissioner—is to coordinate the function;; of security, patrol and investigation divisions in the Customs Bureau, all of which positions have been declared by Executive Order to be primarily confidential, then the Office of Director for Security must itself be considered primarily confidential. They then justify the transfer of Villegas to the Arrastre Service on the basis of the statement in *De los Santos vs. Mallare*, 87 Phil., 287, to the effect that positions which are primarily confidential, policy determining and highly technical "are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution."

On the other hand, in sustaining Villegas' right to the office of Director for Security, the Court of Appeals relied mainly on Section 671 of the Revised Administrative Code—

"The following officers and employees constitute the unclassified services:

"(1) Positions which may be declared by the President of the Philippines, upon recommendation of the Commissioner of Civil Service, as policy-determining, primarily, confidential or highly technical."

in reaching the following conclusion:

". . . the only authority who, by constitutional and legal provisions, is competent to classify a position into primarily confidential is the President. The heads of departments and the Commissioner of Civil Service can only recommend or make comments. The fact that a proposal to appoint to a certain position, that of arrastre superintendent, has been favorably recommended and endorsed by the department heads and the chiefs of offices and approved by the Office of the President does not go to show that an entirely different position, that of Director for Security has been classified into category of primarily confidential.

"The evidence of the defendants-appellants yield no indication that the position of Director for Security has even been classified into Primarily confidential according to the procedure laid down by the law and the Constitution. It results that the removal of the plaintiff from the said position without justifiable cause and his transfer to the position of arrastre superintendent are illegal \* \* \* Consequently the appointment of defendant Keefe to the position of Director for Security, the effect of which is to exclude and remove the plaintiff from the said position, is also illegal."

For our purposes, we do not need to consider the position involved in this case is primarily confidential, because, even assuming the position to be, it is nevertheless subject to the Constitutional provision that "No officer or employee in the Civil Service shall be removed or suspended except for cause." (Phil. Const., Art. XII, sec. 4) Villegas' removal is, therefore, concededly without cause. Thus, only recently, this Court reiterated in *Corpus vs. Cuaderno*, G. R. No. L-23721, March 31, 1965, the view that—

The Constitutional provisions merely constitute the policy determining, primarily confidential, and highly technical positions as exceptions to the rule requiring appointments in the Civil Service to be made on the basis of merit and fitness as determined from, competitive /examinations (sec. 1, *supra*) (*Jover vs. Borra*, 93 Phil., 506; 49 Off. Gaz., [No. 7] 2755), but that the Constitution does not exempt such positions from the operation of the principle emphatically and categorically enunciated in section 4 of Article XII, that—

"No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by

law." and which recognizes no exception.

This view finds confirmation in sections 3 and 5 of the Civil Service Act of 1959 (Rep. Act No. 2260).

The statement in *De los Santos vs. Mallare*, supra, to the effect that appointment to any of the three classes of positions is terminable at the will of the appointing power, must be deemed a mere obiter. It has been correctly criticized as misleading. For if these three special positions do not really belong to the Civil Service, the Constitution would not have specifically named them as an exception of the general rule that all appointments must be made on the basis of merit and fitness to be determined by competitive examinations. (Sinco, *Philippine Political Law* 411 h ed. 1962J) Indeed, in the *Corpus* case, this statement held as not controlling, the ruling in the *De los Santos* case, where the statement appears, being that a city engineer who belongs to the unclassified service is protected by the security-of-tenure provision of the Constitution.

It is to be understood of course that officials and employees holding primarily confidential positions continue only for so long as confidence in them endures. The termination of their official relation can be justified on the ground of loss of confidence because in that case their cessation from office involves no removal but merely the expiration of the term of office—two different causes for the termination of official relations recognized in the *Law of Public Officers*. (See, e.g., *Corpus vs. Cuaderno*, supra; *Alva vs. Evangelista*, 53 Off. Gaz., 1452; *Fernandez vs. Ledesma*, G. R. No. L-18878, March 30, 1963. Contra, *Hojilla vs. Marino*, G. R. No. L-20574, Feb. 26, 1965) But the point is that as long as confidence in them endures—and it has not been shown that it has been lost in this case—the incumbent is entitled to continue in office.

We therefore hold that Villegas' removal from the office of Director for Security is without cause and is therefore illegal.

WHEREFORE, the decision appealed from is affirmed, with-out pronouncement as to costs.

Concepcion, Reyes, J.B.L., Paredes, Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Bengzon, C.J., concurs in the result.

Decision affirmed.

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