

GREGORIO Y. ROMERO, PETITIONER AND APPELLEE, VS. THE HONORABLE MUNICIPAL MAYOR OF BOLJOON, CEBU, ELIAS GOMERA, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-22062. March 29, 1968

Ponente: DIZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3b2e61d61733/>

DIZON, J.:

Appeal taken by Elias Gomera, Municipal Mayor of Boljoon, Cebu, the Municipality of Boljoon, its Council and Treasurer, from the following judgment of the Court of First Instance of said province in Civil Case No. R-7848:

"In view thereof, judgment is hereby rendered:

(1) Granting the writ of mandamus in the first cause of action, directing respondents to reinstate the petitioner immediately in his position as Chief of Police of Boljoon, Cebu, subject to the result of his appeal in Administrative Case No. 2, now pending in the Civil Service Commission;

(2) Declaring null and void the proceedings and Resolution of the Municipal Council of Boljoon in Administrative Case No. 3 dismissing the herein petitioner for the failure to pay his 'just debt' to the Villarica Finance Company; and

(3) Dismissing the petition for the writ of prohibition in Administrative Case No. 4, and directing the respondent either to dismiss the same or to proceed with it in accordance with the opinion heretofore stated.

No costs and damages."

The facts necessary to decide this appeal are the following:

Appellee Gregorio Y. Romero, a civil service eligible, was appointed Chief of Police of the Municipality of Boljoon, Cebu, on January 23, 1954. On August 16, 1962, the Municipal Mayor of Boljoon, suspended him from office following the filing of Administrative Case No. 2 against him with the Municipal Council for serious irregularities in the per-formance of official duties. After several postponements of the hearing at Romero's instance, the Council, on November 16, 1962, approved its Resolution No. 66 finding him guilty and dismissing him from office effective August 16, 1962 - the date of his preventive suspension. Romero then appealed to the Commissioner of Civil Service.

In a letter dated December 14, 1962 addressed to the Municipal Mayor, Romero, thru counsel, asked for his immediate reinstatement, invoking the provisions of Section 3 of Republic Act No. 557 limiting the period of preventive suspension of provincial guards, city police and municipal police to sixty days. The Mayor denied the request on the 18th of the same month and year.

Meanwhile, on August 23, 1962, Administrative Case No. 3 was filed with the Municipal Council by the Villarica Finance Company against Romero for alleged wilful neglect to pay his just obligation to it in accordance with Section 1135 of the Civil Service Manual, etc. Romero moved to dismiss the com-plaint on the grounds that the

Municipal Council had no jurisdiction to try the same as the charges were not filed by the Municipal Mayor as required by law and that the subject-matter thereof was not one of the grounds recognized by Republic Act No. 557 for the suspension and/or removal of members of the Municipal Police. The Council denied the motion and proceeded ex-parte to hear the case upon failure of Romero to appear at the hearing. On December 17, 1962, the Council approved Resolution No. 75 ordering Romero's dismissal as Chief of Police of Boljoon, Cebu.

On October 16, 1962, still another administrative complaint - the fourth - was filed by the Municipal Mayor with the Municipal Council against Romero for alleged gross misconduct and dishonesty in the performance of official duty in that the latter refused to record in the police blotter a complaint for destruction of property filed by a certain Salvacion Sestoso against one Nabor Derama and failed to take any action thereon. Again, Romero moved to dismiss the case on the ground that he, being the Chief of Police and deputy of the Provincial Fiscal in the prosecution of criminal cases, was vested with discretion to file or not to file criminal complaints. The Municipal Council denied the motion and proceeded to hear the complaint. As Romero failed to appear at the hearing, the Council resolved to postpone the same indefinitely until the final determination of Administrative Case No. 2 mentioned heretofore.

On January 26, 1963, Romero - hereinafter referred to as appellee - filed the present petition for a writ of mandamus and/or certiorari and prohibition, with damages, with the Court of First Instance of Cebu against appellants to secure judgment ordering the Municipal Mayor of Boljoon to reinstate him in office; declaring null and void Resolution No. 75 of the Municipal Council of Boljoon in Administrative Case No. 3; prohibiting said Municipal Council from further proceeding with the hearing in Administrative Case No. 4; and for the recovery of his salary from October 16, 1962 - the date appellee claims he should have been reinstated in office - plus damages and attorney's fees.

In due time, respondents-appellants filed their answer, in which, after making denials and admissions of fact, they interposed the following affirmative defenses: (1) that the petition did not state facts constituting a cause of action in favor of petitioner (appellee herein); that the decision of the Municipal Council was rendered within sixty days from the date of appellee's preventive suspension, and that whatever delay there was thereafter was due to his own act of appealing to the Commission of Civil Service; and that appellee had not exhausted all the administrative remedies available to him at law.

After due trial, the lower court rendered the appealed judgment.

From the assignment of errors made in appellants' brief it appears that the only issue to be resolved in this appeal is whether or not appellee is entitled to reinstatement pending final determination of his appeal to the Commissioner of Civil Service.

It is an admitted fact that appellant Municipal Council's decision in Administrative Case No. 2 was rendered within the sixty-day period prescribed by the provisions of Republic Act No. 557 from the date of appellee's suspension from office, after deducting the delay chargeable against the latter. The lower court, however, held that from the time appellee was notified of the decision of the Council and he appealed to the Commissioner of Civil Service, he was entitled to re-instatement after the lapse of the period of sixty days pursuant to Section 35 of Republic Act 2260 (Civil Service Act of 1959) and the doctrine laid down in *Garcia vs. the Executive Secretary*, et al. G. R. L-19748, September 30, 1962.

The question to be resolved is not new. In *Alacar vs. City Mayor etc.*,^[1] construing the provisions of Section 3 of Republic Act No. 557, We said the following:

"This question has already been resolved in the affirmative in the case of *Martinez vs. Municipal Mayor of Labason*, et al., G.R. No. L-11888, April 30, 1958, wherein this Court made the following pronouncement:

'It will be noticed, however, that on the sixtieth day the council voted by resolution to remove the petitioner from his position. Such resolution would have decided the matter finally if petitioner had not filed a notice of appeal to the Commissioner of Civil Service. Therefore, his case was not finally disposed of because of his own voluntary act of appealing, which amounted to a petition for review. Such petition excused any delay in the definite disposition of the charges.

'Indeed, it would be contrary to the spirit of mandamus proceedings to compel reinstatement of suspended officers after the latter had been found guilty and dropped from the service by the competent official body. Such suspended official, it may be said, did not have a clear legal right (to return) enforceable by mandamus. And the court's discretion should not be exercised in a way injurious to public interest; nor should mandamus issue where it would not promote substantial justice.'

More recently We decided the case of *Kordovez vs. Carmona etc.*, G. R. No. L-21473, October 31, 1967, which is on all fours with the present, the pertinent portions of our decision being as follows:

"Petitioner Perfecto D. Kordovez was a desk sergeant of the police force of the City of San Carlos, Province of Negros Occidental, with the required civil service eligibility. Having been charged administratively by the respondent mayor for violation of law or duty, he was suspended from office on September 19, 1962.

"After due investigation of the charges, the Municipal Board, on October 24, 1962, rendered a decision dismissing him from the service. There-upon and within the period provided for in Republic Act No. 557, he appealed to the Commissioner of Civil Service.

"Sixty days after the date of his suspension (September 19, 1962) petitioner asked the respondent mayor to order his reinstatement pending appeal, invoking the provisions of Section 35 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, in relation to Section 3 of Republic Act No. 557, and our ruling in the case of *Paulino Garcia vs. the Hon. Executive Secretary, et al.* Respondent having refused to do so, the petitioner filed with the Court of First Instance of Negros Occidental a Petition for Mandamus to secure an order for his reinstatement, to recover back salaries from November 19, 1962, the date which he claimed to be the end of his 60-day preventive suspension, and damages (Civil Case No. 6862).

"After due trial, however, the lower court rendered its decision dismissing the petition. Hence, this appeal."

To secure a reversal of the abovequoted decision, Kordovez relied anew upon the provisions of Section 35 of Republic Act 2260, in relation to Section 3 of Republic Act, No. 557, claiming that thereunder he was entitled to re-instatement because the Commissioner of Civil Service had not decided his appeal within the period of sixty days. We found this contention to be without merit and said the following:

"The law applicable to the present case is Republic Act No. 557, Section 3, and not the one relied upon by the petitioner. Contrary to his view, We are of the opinion that no provision of the latter had repealed the former. Republic Act No. 2260 is a general law which covers public officials and employees, civil service eligibles or not, while Republic Act No. 557 is a special law which applies only to provincial guards, city and municipal policemen with civil service eligibility. In case of conflict between the two kinds of legislative enactment, the rule is that the one general in character shall not be deemed to have repealed the special law unless that is expressly and clearly provided in the former. The reason for this is that the special law evinces the particular legislative intent more clearly.

"That Section 3 of Republic Act No. 557 was not repealed by Section 35 of Republic Act No. 2260 may also be inferred from the fact that Section 16 of Republic Act No. 4864, otherwise known as the Police Act of 1966 - which took effect on September 8, 1966 - reproduces the last part of Section 3 of Republic Act No. 557 as follows:

"x x x x x x x x Provided, however, That if the delay in the dis-position of the case is due to the fault, negligence, or petition of the respondent, the period of the delay shall not be counted in computing the period of suspension herein provided. The respondent shall be entitled to his salary for the period of suspension upon exoneration.'

"In connection with such provision, We have held heretofore that although under Republic Act No. 557 a suspended policeman is entitled to re-instatement if the administrative case against him has not been finally decided within sixty (60) days after his preventive suspension, such reinstatement can not be demanded if the delay in the disposition of his case is due to his own fault or petition as when the cause of the delay was the appeal to the Commissioner of Civil Ser-vice taken by him (Alacar vs. City etc., G. R. No. L-10020, December 29, 1958; Martinez vs. Municipal Mayor etc. G.R. No. L-11868, April 30, 1958)."

UPON ALL THE FOREGOING, judgment is hereby rendered reversing the decision appealed from in so far as it directs the appellants herein to reinstate appellee immediately "to his position as Chief of Police of Boljoon, Cebu, subject to the result of his appeal in Administrative Case No. 2". With costs.

Reyes, Acting C.J., Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Benzon and Castro, JJ., did not take part.

[1] G. R. No. L-10020, December 29, 1958.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.