

DONATO M. ATEL, PETITIONER AND APPELLEE, VS. EMELIO LUMONTAD, JR., ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-19574. July 30, 1965*

Ponente: BAUTISTA ANGELO, J.

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On March 16, 1949, Jose Lesigues was appointed Chief of Police of Pinamungajan, Cebu, while on May 15, 1952 Donato M. Atel was appointed corporal of the police force of the same municipality. Sometime in May, 1952, the then incumbent mayor of Pinamungajan, Olegario Y. Ruiz, filed administrative charges against Lesigues for falsification of public documents, neglect of duty, incompetence, insubordination and electioneering during the last elections for which reason he was suspended as chief of police. These charges were referred to a police committee for investigation after which the committee submitted its report and recommendation to the municipal council for appropriate action. On September 15, 1952, said municipal council approved a resolution wherein, after approving the recommendation of the committee created to investigate the charges, it resolved to dismiss Jose Lesigues from the service effective from the date of his suspension. Lesigues appealed the resolution to the Civil Service Commission which, in a resolution dated June 7, 1955, directed the municipal council of Pinamungajan to conduct a reinvestigation in accordance with the interpretation placed by the Supreme Court on Section 1, of Republic Act No. 557 in the sense that the investigation should be conducted by the municipal council and not merely by a committee created by it for the purpose. In the mean time, Donato Atel was temporarily appointed chief of police of Pinamungajan effective July 1, 1954 by the then Municipal Mayor Melquiades Pono, which appointment was later reiterated by Mayor Jesus F. Nemenzo effective October 1, 1954.

In a regular session held by the Municipal Council of Pinamungajan the same issued a resolution informing the Civil Service Commission that it was not in a position to conduct a reinvestigation of the administrative case against Lesigues because the records of the case had been lost, and so on June 18, 1956 the Civil Service Commission rendered a decision finding Lesigues guilty of falsification of public documents, neglect of duty, and electioneering, as a result of which the Mayor of Pinamungajan extended a new appointment to Donato Atel as chief of police effective July 24, 1956. And by virtue of such new appointment, Atel once more entered into the discharge of his duties as such Chief of Police of Pinamungajan.

But, on January 1, 1960, after Emilio Lumontad, Jr. had assumed his position as Municipal Mayor of Pinamungajan, Lesigues addressed a letter to the new mayor requesting him to conduct a reinvestigation of his case and asking that he be reinstated, and acting favorably thereon Mayor Lumontad reinstated Lesigues to his office as chief of police effective January 25, 1960 and, as a result, Atel turned over his office to the reinstated chief of police. As a consequence, Atel filed the instant petition for mandamus before the Court of First Instance of Cebu praying that an order be issued declaring the appointment of respondent Jose Lesigues as Chief of Police of Pinamungajan illegal thereby reinstating him in his place with costs of the proceedings.

Respondents in their answer advanced the defense that the investigation of Jose Lesigues of the administrative charges filed against him was illegal because it was conducted not by the municipal council but merely by a

police committee contrary to law and to the decision rendered by the Supreme Court on the matter.

Predicated upon the theory that the decision of the Civil Service Commission finding respondent Jose Lesigues guilty of the charges preferred against him had already become final for failure on the part of Lesigues to appeal from said decision, the court a quo granted the petition and ordered respondent Lesigues to vacate the position of chief of police in favor of petitioner Donato Atel. His motion for reconsideration having been denied, respondent Lesigues interposed the present appeal.

There is no dispute that the administrative charges filed against respondent Lesigues by the then incumbent Mayor Olegario Y. Ruiz were investigated by a police committee created by the Municipal Council of Pinamungajan, which committee, after the corresponding investigation, submitted its report and recommendation to said municipal council which, accordingly, approved a resolution separating from the service respondent Jose Lesigues. Respondent Lesigues appealed the resolution to the Civil Service Commission which in a resolution dated June 7, 1955 directed the municipal council to conduct a new investigation following the interpretation placed by the Supreme Court on Section 1 of Republic Act 557, but that said municipal council instead of conducting a reinvestigation merely informed the Civil Service Commission of its inability to conduct the desired reinvestigation because the papers and records of the case had been lost. And on the strength of said information, the Civil Service Commission rendered decision finding respondent Lesigues guilty of the charges preferred against him and recommenced his dismissal. Accordingly, Lesigues was dismissed and petitioner Donato Atel was appointed in his place. But shortly after respondent Emilio Lumontad, Jr. had assumed his position as municipal mayor he immediately reinstated Jose Lesigues to said position acceding to the request of the latter contained in his letter of January 21, 1960. This reinstatement is now disputed by Atel who contends that the same is contrary to law and the pertinent jurisprudence on the matter.

We find no merit in this contention since it clearly appears in Section 1 of Republic Act 557 that whenever charges are preferred against, among others, a member of the municipal police force the same shall be investigated by the municipal council in a public hearing wherein the accused shall be given an opportunity to make his defense. And this provision was declared by this Court to be mandatory in several cases the most recent of which is *Senarillos vs. Hermosissima, et al.*, 100 Phil., 501, wherein this Court laid down the following ruling:

"That the investigation of police officers under Republic Act No. 557 (as distinguished from sec 2272 of the Adm. Code) must be conducted by the council itself, and not by a mere committee thereof, is now established jurisprudence and no longer open to question since our decision in *Festejo vs. Mayor of Nabua*, 96 Phil., 286; 51 Off. Gaz., p. 121, reaffirmed in subsequent decisions.

"The second reason for invalidating the investigation is the fact that the charges were investigated by a committee of the city council, not by the council itself. While it is true that we had held in *Santos vs. Mendoza*, 48 Off. Gaz., No. 11, p. 4801, that such a procedure is valid, the law has been changed since the above decision. Republic Act No. 667 has eliminated the provision authorizing investigation by a committee of the council. We held that the change meant that the investigation should be by the council itself (*Festejo vs. Municipal Mayor of Nabua*, 96 Phil./281). We affirmed this doctrine in the recent case of *Covacha vs. Amante*, G. B. No. L-8358, prom. May 25, 1966. The trial court was, there fore, correct in holding that the investigation proceedings were not conducted by the municipal council and in annulling the results of the investigation, (*Crispin Carmona vs. Felix P. Amante*, 99 Phil., 716; August 14, 1966, 52 Off; Gaz., No. 11, p. 5109)

"Therefore, it is clear that under the present law, the 'police committee' constituted by the Municipal Council of Sibonga had no jurisdiction to investigate the appellee Chief of Police; hence the decision against him was invalid, even if concurred in by the rest of the councilors, specially since the petitioner called attention from the beginning to the impropriety and illegality of the committee's actuations, and of his trial by only some and not all the members of the council. The subsequent reaffirmation of their decision by the Civil Service

authorities could not validate a proceeding that was illegal and ab initio void." (See also *Cuyo vs. The City Mayor, et al.*, 101 Phil. 558)

The fact that respondent Lesigues did not appeal the decision to the Civil Service Board of Appeals and for that reason the decision became final, is of no moment, it appearing that the decision of the Civil Service Commission was based on an invalid decision of a police committee of investigation (*Salcedo vs. The Municipal Council of Candelaria, Quezon*, L-18714, October 31, 1963). It should be recalled that when the Municipal Council of Pinamungajan approved its resolution on September 15, 1952 dismissing respondent Jose Lesigues from the service following the recommendation of the police committee created for the purpose and submitted copy of said resolution to the Civil Service Commission, the latter, in a resolution dated June 7, 1955, directed said municipal council to conduct a reinvestigation in accordance with Section 1 of Republic Act 557, as interpreted by this Court, but this directive was not followed for the flimsy reason that the records of the case had already been lost. This excuse is no valid justification to disregard the mandate of the law as interpreted by this Court.

Wherefore, the decision appealed from is reversed. No costs.

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

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