

MARCIANO INOCENTE, ET AL., PETITIONERS AND APPELLANTS, VS. MAMERTO S. RIBO, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-4989. March 30, 1954

Ponente: PADILLA, J.

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PADILLA, J.:

This is a quo warranto case. The petitioners claim that they are entitled to hold the office of provincial guards at the provincial jail in the municipality of Baybay, Province of Leyte, to which they were duly appointed; that except Mamerto S. Ribo and Melecio Palma, provincial governor and treasurer, respectively the respondents, who replaced them in their positions, are not entitled thereto, because their appointments are unauthorized, and for that reason they pray that they and not the respondents be declared entitled to the office of provincial guards with station at Baybay, Leyte.

At the hearing the parties submitted a stipulation which reads thus—

Come now the parties hereto duly assisted by their respective counsel and to this Honorable Court respectfully submit stipulation of facts as follows:

- That the parties, petitioners and respondents, are residents of the Province of Leyte within the jurisdiction of this Court;
- That the positions of provincial guard stationed in the Baybay provincial jail, subject matter of this petition, were duly created by law;
- That the petitioners were duly appointed members of the Provincial Guard Corps stationed at Baybay, Leyte, on the dates indicated after their respective names, and they duly qualified and assumed office, discharged their duties as such provincial guards on the dates herein below indicated, to wit:

Name of Petitioner	Date of Appointment	Position
1. Marciano Inocente	Sept. 1, 1949	Sgt., P. G.
2. Cresencio Bagaslao	Sept. 1, 1949	Pvt., P. G.
3. Sulpicio Rule	Feb. 15, 1949	Pvt., P. G.
4. Alejandro Acedillo	Aug. 8, 1949	Pvt., P. G.
5. Telesforo Galenzoga	Sept. 1, 1949	Pvt., P. G.
6. Francisco Sevilla	Oct. 1, 1950	Pvt., P. G.
7. Diome Medina	Aug. 12, 1950	Pvt., P. G.
8. Epifanio Enclona	Feb. 20, 1949	Pvt., P. G.

9. Diosdado Piastro Sept. 1, 1949 Pvt., P. G.
10. Quirino Japon Sept. 16, 1949 Pvt., P. G.
11. Epifanio Polistico July 1, 1948 Pvt., P. G.
12. Adriano Catorce Sept. 16, 1949 Pvt., P. G.
13. Adriano Palugod Aug. 9, 1949 Pvt., P. G.
14. Florderico Cortez Aug. 9, 1949 Pvt., P. G.

as shown in Exhibits "A" to "A-13."

- That Marciano Inocente and Telesforo Galenzoga are civil service eligible having passed the patrolmen examinations as shown by Exhibits "B" and "B-1," and the rest of the petitioners are non-eligibles but Cresencio Bagaslao, Sulpicio Rule, Alejandro Acedillo and Adviano Gatorce, are veterans and the rest recognized guerillas under Republic Act No. 65; Marciano Inocente took the place of Ciriaco Fallerina, also civil service eligible, as shown in Exhibit "1."

- That from the respective dates of petitioners' assumption of office an the termination of their services, as herein below indicated, to wit:

Name of Petitione

Assumption

Termination

1. Marciano Inocente

Sept. 6, 1949

Oct. 31, 1950

2. Cresencio Bagaslao

Sept. 1, 1949

Oct. 31, 1950

3. Sulpicio Rule

Feb. 16, 1949

Nov. 9, 1950

4. Alejandro Acedillo

Aug. 17, 1949

Oct. 31, 1950

5. Telesforo Galenzoga

Sept. 1, 1949

Oct. 31, 1950

6. Francisco Sevilla

Oct. 4, 1950

Oct. 31, 1950

7. Diome Medina

Aug. 18, 1950

Oct. 31, 1950

8. Epifanio Enclona

Feb. 23, 1948

Oct. 31, 1950

9. Diosdado Piastro

Sept. 1, 1949

Nov. 9, 1950

10. Quirino Japon

Sept. 16, 1949

Oct. 31, 1950

11. Epifanio Polistico

Feb. 16, 1949

Oct. 31, 1950

12. Adriano Catorce

Sept. 16, 1949

Oct. 31, 1950

13. Adriano Palugod

Aug. 11, 1949

Oct. 31, 1950

14. Florderico Cortez

Aug. 10, 1949

Oct. 31, 1950

the said petitioners have continuously performed the duties of their office regularly and without interruption.

- That on the dates indicated after their names as above shown, the petitioners' services were ordered terminated by the Provincial Governor, Hon. Mamerto S. Ribo, as shown in Exhibits "C" to "C-13," and their positions were occupied by the following:

Date assumed office

1. Nazario Viterbo vice Alejandro Acedillo Nov. 1, 1950
2. Ponciano Loterte vice Epifanio Enclona Nov. 1, 1950
3. Filemon Lagutan vice Quirino Japon Nov. 1, 1950
4. Juan Gaones vice Adriano Palugod Nov. 1, 1950
5. Jovito Matillano vice Diosdado Piastro Nov. 1, 1950
6. Quirico Llonas vice Florderico Cortez Nov. 1, 1950
7. Victoriano Zabate vice Epifanio Polistico Nov. 1, 1950
8. Genaro Gelig vice Telesforo Calenzoga Nov. 1, 1950
9. Silvino Baquero vice Sulpicio Rule Nov. 8, 1950
10. Francisco Dichosa vice Cresencio Bagaslao Nov. 1, 1950
11. Igmedio Paciencia vice Adriano Catorce Nov. 1, 1950
12. Bernardo Corsanes vice Diome Medina Nov. 1, 1950
13. Andronico Morfe vice Clodualdo Enabore Oct. 28, 1950
14. Zosimo Macaraya vice Gavino Salvation Nov. 8, 1950

as shown by documents which are marked Exhibit "3" to "16".

- That since the aforesaid petitioners have been duly appointed and qualified and assumed the performance of their respective offices, they did not resign nor have they been removed either for misconduct, in competency, disloyalty to the Philippine Government, neither have they ever committed any irregularity in the performance of their duties nor have they violated any law or duty or committed any act that may cause abandonment of their duties nor have they been investigated for cause but they had to give up their positions by virtue of the order of termination. Petitioner Marciano Inocente signed the memorandum, dated October 31, 1950, which is marked Exhibit "2".

- That until the present the respondents, Governor, Treasurer and Guards, have refused and continue to refuse the petitioners their respective positions above mentioned and they have not been paid their salaries from the time of their termination of their services or removal from their offices until the present.

- That the respondent, Mamerto S. Ribo, appointed the respondents on the dates indicated after their names and the latter took oath and assumed office as specified in paragraph 6 and continue to hold the same up to the present time and have been paid their respective salaries from November 1, 1950 to March 15, 1951 against the protests of the petitioners.

- Respondents and petitioners admit the authenticity and due execution of Exhibits "D," and "D-1," "D-2," and "D-3," "E," "E-1," and "F" of petitioners and of Exhibits "3" to "28" of respondents without admitting their validity, legality nor the conclusions contained therein.

Wherefore, the parties to this Honorable Court most respectfully submit the foregoing stipulation of facts with the reservation to submit such additional evidence as each party deem necessary.

Baybay, Leyte, March 19, 1951.

Attys. PRISCO M. BITOS & LEON Attys. DOMINGO VELOSO, ZOSIMO

C. NUEVAS, Counsel for the J. CABLITAS and FILEMON SA-

respondents. AVEDRA, Counsel for the peti-

tioners.

By: (Sgd.) PRISCO M. BITOS

(Sgd.) ANDRES T. DELFINO By: (Sgd.) Zosimo J. Cablitas

Counsel for the Provincial

Governor and Provincial

Treasurer

(Pages-88, Record of the Case.)

Exhibit 22 is an indorsement dated 8 November 1950 where by direction of the provincial governor the secretary of the provincial board informed Marciano Inocente that Jose Tualla had been assigned as deputy warden of the Baybay provincial jail and that his (Inocente's) request to remain in the service had been granted not as deputy warden but as sergeant assigned to Maasin provincial jail and such assignment to take effect on the date Jose Tualla assumes office as deputy warden of the Baybay provincial jail. It does not appear that Jose Tualla has assumed the office. Exhibit 23 is a letter dated 3 February 1951 where by direction of the provincial governor the secretary of the provincial board requested Telesforo Galenzoga to come to Tacloban to report for duty as provincial guard at the Tacloban provincial jail, in view of the information furnished by the Commissioner of Civil Service that he (Telesforo Galenzoga) was a civil service eligible.

Upon the foregoing stipulation and documentary evidence presented, the trial court held that, with the exception of Marciano Inocente and Telesforo Galenzoga, who are civil service eligibles, the petitioners are not entitled to hold the position as provincial guards and that Marciano Inocente having refused the transfer from the Baybay provincial jail where he was deputy provincial warden to Maasin provincial jail as sergeant of the provincial guards, and Telesforo Galenzoga having refused to report for duty as provincial guard at Tacloban provincial jail, they are no longer entitled to their original positions, for, in the opinion of the trial court, the provincial governor is vested with authority, control and supervision of the provincial guards in his province and he alone has the power and discretion to determine the assignment of said provincial guards within the province as required by the public interests. The trial court further held that the refusal of the two petitioners to be transferred constitutes an abandonment of office. Nevertheless, the trial court held that they are entitled to their respective salaries from the date they were unjustifiably dismissed to the date when they were offered reinstatement in the service. Upon these grounds, the trial court dismissed the petition for quo warranto but ordered the provincial treasurer of Leyte to pay the salaries of Marciano Inocente and Telesforo Galenzoga as sergeant and provincial guard, respectively, from 31 October 1950, when they were dismissed from the service, to 8 November 1950 and 3 February 1951, respectively, when the offer to reinstate them in the service was unjustifiably refused, without special pronouncement as to costs. From this judgment petitioners have appealed.

The only question raised by the petitioners Marciano Inocente and Telesforo Galenzoga is that being civil service eligibles, they are entitled to their positions as sergeant of the provincial guards and provincial guard, respectively, in the Baybay provincial jail, Leyte, to which they were appointed, and may be removed only for

cause and in accordance with the prescribed legal process. Neither in the answers filed for the respondents provincial governor and treasurer of Leyte who are just nominal parties, nor in the answer for the rest of the respondents does the point of reinstatement, transfer and refusal to be transferred is raised and joined as issue by the parties. In the stipulation of facts the question of reinstatement, transfer and refusal to be transferred is not submitted for judgment of the trial court. It appearing that they were removed without cause and not in accordance with law, as prescribed and provided for in Rep. Act No. 557, their removal is unauthorized and unlawful. They are entitled to be reinstated and to their salary for the whole period of their unlawful ouster from office.

It is claimed, however, that the review of the judgment appealed from cannot sidetrack the question of reinstatement and transfer of, and refusal to be transferred by, the petitioner Marciano Inocente, which in the opinion of the trial court constitute an abandonment of office, because the trial court passed upon it. As already pointed out, there is no evidence that Jose Tualla has assumed the position of deputy warden of the provincial jail at Baybay, a condition required before petitioner Marciano Inocente could assume the position of sergeant of the provincial guards at the Maasin provincial jail. He cannot be deemed to have refused a transfer to a position which he could not assume. If he cannot be deemed to have refused the transfer, there is no basis for the pronouncement that he abandoned a position or office which he has not assumed because he could not assume it. An office cannot be abandoned by one who has not occupied it. Apart from this, the provincial governor cannot remove petitioners Marciano Inocente and Telesforo Galenzoga who are civil service eligibles. They may be removed only in accordance with the provisions of Republic Act No. 557. The provincial governor cannot transfer them from the positions to which they were appointed to another, pursuant to section 2081 of the Revised Administrative Code, as amended by Republic Act No. 528, which took effect on 16 June 1950. The pertinent provisions of said section are:

* * * the Provincial Governor shall, any provision of existing law to the contrary notwithstanding, appoint, upon recommendation of the chief provincial official concerned, all the subordinate officers and employees in the various branches of the provincial government whose salaries, compensation or wages are paid, wholly from provincial funds in conformity with the provisions of the Civil Service Law, except those appointments are now or may hereafter be vested in the President or proper Department Head, teachers and other school employees and transient officials or employees who shall, as heretofore, be appointed by the proper chief of provincial office with the approval of the Department Head concerned: * * *.

Transient officials or employees shall be understood for the purposes of this Act to include those who, under the rules and regulations of the Department, bureaus and offices concerned, may, from time to time be transferred from one * * * municipality * * * to another in the interest of the public service.

Employees who are civil service eligibles at the time of the approval of this Act and therefore shall continue in the service unless removed for cause in accordance with the Civil Service rules and regulations.

If the petitioners Mareiano Inocente and Telesforo Galenzoga were appointed as sergeant of the provincial guards and provincial guard, respectively, for the province of Leyte and not with a definite station at Baybay, Leyte, their respective transfers to Maasin and Tacloban, Leyte might have a different legal aspect and effect. There is no proof that under the rules and regulations of the Department, bureau and office concerned, the petitioners are transient officials or employees who may, from time to time, be transferred from one municipality to another in the interest of the public service.

The claim of the other petitioners is that they are entitled to preference over the respondents who are not civil service eligibles, because although they are also not civil service eligibles, petitioners Cresencio Bagaslao, Sulpicio Rule, Alejandro Acedillo and Adriano Catorce are veterans, and the rest of them are members or enlisted

men of good standing of recognized guerrilla organizations, under Republic Act No. 65, as amended by Republic Act No. 154, as agreed in paragraph 4 of the stipulation of facts, and were all appointed within the three-year period provided for in Republic Act No. 65, as amended, from the date of the approval of the Act, with the exception of Diome Medina and Francisco Sevilla who were appointed on 18 August 1950 and 4 October 1950, respectively, or beyond the said three-year period, according to paragraph 5 of the stipulation. The reason for the preference of a veteran is stated in *Orais vs. Ribo*,[*] 49 Off. Gaz., 5386, 5393.

* * * The replacement of * * * non-eligibles but veterans by * * * non-eligibles, is unlawful. The former are preferred under Republic Act No. 65, as amended by Republic Act No. 154, they having been appointed within the term provided for in said Republic Acts. If the preference of a veteran is to be confined to appointment and promotion only and does not include the right to continue to hold the position to which he was appointed until an eligible is certified by the Commissioner of Civil Service, then he would be in no better situation than a non-eligible who is not a veteran. The appointment of a veteran, however, is subject to cancellation or his removal from office or employment must be made by competent authority when the Commissioner of Civil Service certifies that there is an eligible.

It does not appear from the stipulation of facts that the respondents are civil service eligibles or that they are officers and enlisted men of the Philippine Army or of recognized or deserving guerrillas who took active participation in the resistance movement, and/or in the liberation drive against the enemy. And even if they were veterans under Republic Act No. 65, as amended, the respondents are not entitled to be appointed to replace the petitioners who are veterans, because the former were not appointed within the period provided in the Act. For that reason the temporary appointment of the respondents Nazario Baterbo, Ponciano Loterte, Filemon Lagutan, Juan Gaones, Jovito Matillano, Quirico Llonas, Victoriano Zabate, Genaro Gelig, Silvino Baquerie, Francisco Dichosa and Igmidio Paciencia, to replace the petitioners Alejandro Asedillo, Epifanio Enclona, Quirino Japon, Adriano Palugod, Diosdado Piastro, Florderico Cortez, Epifanio Polistico, Telesforo Galenzoga, Sulpicio Rule, Cresencio Bagaslao and Adriano Catorce, is unlawful. The temporary appointment of respondent Bernardo Corsanes under section 682 of the Revised Administrative Code to replace Diome Modina, a veteran, whose preference for appointment had lapsed, is lawful. Petitioner Diome Modina who was appointed on 18 August 1950, or beyond the three-year period provided for in Republic Act No. 65, as amended, is no longer entitled to his position, because pursuant to section 682 of the Revised Administrative Code, he may be replaced by another temporary officer. The three-month period provided for in section 682 of the Revised Administrative Code allows under certain conditions the holding of an office or employment by a temporary appointee during the whole term but does not confer upon him the right to hold the office or employment for the full term. The temporary appointment of Andronico Morfe and Zosimo Macaraya under section 682 of the Revised Administrative Code to replace Clodualdo Enabore and Gavino Salvacion, who are not parties to this quo warranto proceedings and whose qualifications are unknown, is lawful. The petition of Francisco Sevilla who, according to the stipulation of facts, has not been replaced by any of the respondents, must be dismissed.

For the foregoing reasons the judgment appealed from is reversed. The petitioners are entitled to their positions as sergeant of the provincial guards and provincial guards, respectively, with station at the Baybay provincial jail, Leyte, and to their salaries during the whole period of their unlawful separation from their office. The petition of Francisco Sevilla is dismissed. The petition to oust respondents Bernardo Corsanes, Andronico Morfe and Zosimo Macaraya is denied. No special pronouncement as to costs.

Pablo, Bengzon, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

[*]93 Phil., 985.

DIOKNO, M.,: disidente:

Disiento de la anterior decision, por la razon de que, en mi humilde opinion, un guardia provincial puede ser repuesto y destinado por el Gobernador Provincial a otra estacion policiaca de la provincia dentro de la misma, por ejemplo en otra carcel provincial de la misma.

Labrador, J., concurs.

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