

ALFREDO ERAUDA AND PAULINO CRAMEN, PETITIONERS AND APPELLANTS, VS. VICENTE S. DEL ROSARIO, AS FORMER CITY MAYOR OF CEBU, JOSE V. RODRIGUEZ, AS INCUMBENT CITY MAYOR, FELIPE B. PA...

G. R. No. L-10552. April 28, 1958

Ponente: ENDENCIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3e5674ad87b5/>

ENDENCIA, J.:

Petitioners-appellants Paulino Cramen and Alfredo Erauda were both temporary employees, without civil service qualifications, in the Office of the City Veterinarian in Cebu City, the first having been appointed on March 81, 1953, as abattoir cleaner, and the second, on December 16, 1951, as cleaner. On July 22, 1953, without any investigation or hearing, they were summarily removed by respondent Vicente S. del Rosario, Acting Mayor of the City of Cebu, through the following communication:

"Considering that you are holding only a temporary appointment, and in line with my policy of reorganizing the City Government, consequent upon my designation as Acting Mayor, and in order to insure more efficiency in the service, please be advised that your services shall be terminated at the close of business hours on July 22, 1952."

Paulino Cramen was replaced by intervenor Antonio Hermosilla, and Alfredo Erauda by Felix Magallanes who was also ousted and replaced by intervenor Marcelo Ibañez. After their removal, they made demand upon respondent Del Rosario for their reinstatement, but it was denied. Later on Vicente S. del Rosario was substituted by Jose S. Rodriguez as City Mayor of Cebu, so petitioners also made demand upon Mayor Rodriguez for their reinstatement, but in vain. Hence on February 17, 1955, they filed in the Court of First Instance of Cebu Civil Case No. 3904, entitled Mandamus with Damages, to secure their reinstatement, their back salaries from the date of their removal and to obtain judgment against Vicente S. del Rosario for the sum of P2,000 as attorney's fees and P3,000 as moral and exemplary damages on the ground that their removal was unlawful, illegal and void. After due trial, the complaint was dismissed, hence the present appeal wherein petitioners claim that the court erred (1) in holding that petitioners' summary removal was lawful; and (2) in allowing payment of salaries to intervenors pending trial of the case on its merit.

The question involved is mainly whether the removal of petitioners was lawful or otherwise, and whether the action was brought in due time in view of the fact that the removal took place in July 22, 1955 and the present action was brought only on February 17, 1955.

There is no dispute that the petitioners were non-Civil Service eligibles and their appointment as abattoir cleaners was temporary in character. The provision of law regarding temporary emergency employees is Section 682 of the Revised Administrative Code, which provides—

"Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interest so

require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles; * * *

Under this provision of law, the appointment of the petitioners expires every three months, after which they could be replaced if the corresponding appointing authority believes it convenient. Accordingly, on July 22, 1953, respondent Vicente S. Del Rosario, as Acting City Mayor of Cebu, could remove them lawfully and replace them with others; therefore, petitioner's removal by respondent Mayor Del Rosario was lawful. It follows that petitioners have no right to compel Mayor Del Rosario or his successor, Mayor Rodriguez, to reinstate them. As we have previously held, temporary employees, because of the nature of their appointment, could be removed and replaced by other non-eligibles after the expiration of their appointment, or after 3 months' service, in accordance with the aforementioned Sec. 682 of the Revised Administrative Code (*Orais et al. vs. Ribo*, 93 Phil., 985; 49 Off. Gaz., 5386).

Lastly, we find that petitioners filed their complaint for reinstatement on February 17, 1955, or after a delay of 1 year, 6 months and 25 days, counted from July 22, 1953, the date of their removal, for which reason they may be considered as having abandoned their office for such a long delay in filing action, for—

"the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding" it, so that the Government may not be faced with the predicament of having to pay two salaries, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so. We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office.

One other point, merely procedural, needs to be considered. This is the fact that the objection as to the delay in filing the action is raised for the first time in this Court, not having been raised in the court below. The above circumstance (belated objection) would bar the consideration if it were a defense merely. However, we consider it to be essential to the petitioner's right of action that the same is filed within a year from the illegal removal. The delay is not merely a defense which may be interposed against it subject to waiver. It is essential to petitioner's cause of action and may be considered even at this stage of the action.

"We would go further by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss." (*Abeto vs. Rodas*, 46 Off. Gaz. [3], 930, 932.)" (*Unabia vs. City Mayor, et al.*, 99 Phil., 258).

As to the second assignment of error, we deem unnecessary to decide it in view of the foregoing conclusion to the effect that the herein petitioners are not entitled to reinstatement, and consequently to any back salaries. Finding no errors in the decision appealed from, the same is hereby affirmed with costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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.