

LIBERATO JIMENEZ, PETITIONER AND APPELLEE, VS. GEN. GUILLERMO B. FRANCISCO, ETC., ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. L-9699. February 28, 1957

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a decision of the Court of First Instance of Manila, ordering respondent-appellant Chairman of the Philippine Veterans Board to prepare or cause to be prepared for the signature of the Secretary of National Defense the appointment of petitioner-appellee Liberato C. Jimenez to any position in the Philippine Veterans Board which is either 'vacant or occupied by a non-eligible with compensation at the rate of P4,800 per annum, upon approval of his Excellency, the President of the Philippines.

The parties submitted in the trial court the following agreed statement of facts on points not controverted:

- "1. That the allegations in paragraphs 1 and 1-a "of the amended petition are correct;
- "2. That the petitioner was extended an appointment as temporary legal investigator in the Philippine Veterans Board dated July 25, 1947, with a compensation of P3,100 per annum, which is a promotion from Temporary Junior Investigator at P2,406, a copy of which appointment is hereto attached as 'ANNEX A';
- "3. That the; petitioner was promoted Temporary Chief of the Investigation Section, of the same Board with an annual salary of P4,800 effective October 1, 1949, the original of which is hereto attached as 'ANNEX B';
- "4. That said appointment was duly authorized by the Bureau of Civil Service under Section 682 of the Revised Administrative Code in the following terms: 'BUT NOT BEYOND THIRTY DAYS (30) FROM THE RECEIPT OF CERTIFICATION OF WELIGIBLE' and duly approved by the Office of the President of the Philippines (See ANNEX 'B' hereof).
- "5. That on June 19, 1951, the petitioner applied for a 45 calendar days' vacation leave of absence from June 20, 1951, to August 3, 1951, which was duly approved by H. F. Hilario Administrative Officer; a copy of which is hereto attached as 'ANNEX C';
- "6. That on November 4, 1950, the petitioner has taken part in the First Grade (Promotional) examination held at Cavite City, by the Bureau of Civil Service, and passed same with a rating, of 74.380; the original of the Report of ratings dated September 5, 1951, is hereto attached as 'ANNEX D';
- "7. That while the petitioner was enjoying his leave of absence, the respondent Gen. Guillermo B., Francisco,' in his capacity as Acting Chairman of the Philippine Veteran Board, wrote to him a letter dated July 30, 1951, advising him that his services in the Board shall terminate pursuant to a resolution of the Board dated July 20, 1951, effective at the close of office hours on August 3, 1951, the original of which is hereto attached as 'ANNEX E'; and copies of which was furnished to the Auditor, Commissioner of Civil Service and Secretary of National Defense;

"8. That the petitioner in a letter to the Secretary of National Defense dated September 26, 1951, requested for his reinstatement, and that on page 2 thereof the Secretary of National Defense made the following decision, copied verbatim is as follows: 'to gen. francisco: ok as requested', then signed 'bamon magsaysay'; a copy of which is hereto attached as ANNEX F';

"9. That said petitioner's letter was endorsed by Gen. Guillermo B. Francisco on October 2, 1951 to the Investigating Committee of the Philippine Veterans Board in a communication marked 'ANNEX I' of the amended answer of September 9, 1953; and that the Chairman of the said Investigating Committee returned to Gen. Francisco on October 20, 1951 with the information that same was preparing criminal charges against herein petitioner (ANNEX 'J' of the amended answer of September 9, 1953) and that in a 3rd indorsement, Gen. Francisco returned same to the Secretary of National Defense inviting attention to the indorsement of said committee (ANNEX K of the amended answer of September 19, 1953); and that as a consequence thereof, the Secretary of National Defense wrote a letter dated October 26, 1951 to the herein petitioner informing him that his request for reinstatement is held in abeyance pending the outcome of the investigation, a copy of which letter is copied verbatim in the amended answer of September 9, 1953;

"10. That on May 19, 1952, the petitioner wrote a letter to the Secretary of National Defense complaining against the actuation of the Philippine Veterans Board and the Acting Chairman thereof, and insisting on his reinstatement; a copy of which letter is hereto attached as 'ANNEX H';

"11. That on July 30, 1952, the Secretary of National Defense wrote a letter to the Acting Chairman of the Philippine Veterans Board ordering the reinstatement of the petitioner in said Board, but not in his former position, a copy of which is hereto attached as 'ANNEX I';

"12. That in a 1st indorsement dated August 18, 1952, by respondent Gen. Guillermo B. Francisco to the Secretary of National Defense, he informed the latter that petitioner's separation from service was not illegal and for which reason the payment of his salary was not feasible and lastly 'there is at present no suitable opening to which he may be considered for appointment'; a copy of which indorsement is hereto attached as 'ANNEX';

"13. That in a letter dated March 2, 1953, the Undersecretary of National Defense, Mr. Teodosio It. Dino, addressed to the Chairman, Philippine Veterans Board, he indorsed a copy of the DECISION of the Civil Service Commission on the reinstatement of the petitioner (known herein as Annex T-1) inviting his attention to the 'last paragraph of the decision in which Mr. Jimenez is 'certified for appointment to any suitable position in the Philippine Veterans Board which is at present occupied by a non-eligible'; a copy of which communication is hereto attached as 'ANNEX K';

"14. That on July 20, 1951, the Philippine Veterans Board unanimously passed a resolution to terminate the services of the herein petitioner as Temporary Chief of the Investigation Section of the Philippine Veterans Board, and to promote Juan L. Gaca'd; a copy of said resolution is attached to respondent Gen. Francisco's answer as 'ANNEX A' thereof;

"15. That on August 16, 1951, the Secretary of National Defense appointed Juan L. Gacad to the position vacated by the petitioner at a compensation of P3,960 per annum to take effect on August 16, 1951, and on March 1, 1952, the said Secretary of National Defense promoted Juan L. Gacad in salary with a compensation of P4,800 per annum effective March 1, 1952, copies of said appointments are attached to the answer of respondent Gen. Francisco dated April 13, 1953, and marked 'Annexes B and C thereof';

"16. That on December 19, 1952, petitioner filed another request for reinstatement and in a 2nd indorsement to the Secretary of National Defense dated October 16, 1952 (copy of which is attached to the answer of respondent Gen. Francisco as Annex E thereof) respondent Gen. Francisco 'suggested that: the papers thereon be referred for comment and recommendation to the Commissioner of Civil Service;

"17. That on October 24, 1952, the Secretary of National Defense in a 3rd indorsement of said date referred the matter to the Civil Service Commission a copy of which is attached to the answer of respondent Gen. Francisco and marked Annex F thereof;

"18. That on May 28, 1952, the Honorable Commissioner of Civil Service, Mr. Jose Gil, in a first indorsement of same date to the Chairman, Philippine Veterans Board Investigating Committee, certified the fact that the petitioner passed the First Grade (promotional) examinations held on November 4, 1950 at Cavite; a copy of which indorsement is hereto attached as 'Annex G

"Wherefore, the undersigned respectfully submit the above as the facts agreed upon by the herein parties and duly supported by the attached ANNEXES 'A' to 'W' which are made part hereof and should be treated conjointly with those attached and made part of respondent Gen. Francisco's answer of April 13, 1953 and amended answer of September 9, 1953 herein referred to as forming part of this agreed statement of facts, all of which should be considered together with the controverted facts which shall be separately proven by the herein contending parties."

At the hearing, the petitioner presented proof that the criminal charges against him were dismissed by the fiscal's Office and that there were then at least two employees receiving P5,100 and P6,000 who were not civil service eligibles.

From the judgment of the trial court, the respondents appealed to the Court of Appeals. In the meantime, the respondents appointed the petitioner as Supervisor of Field Team, by reason of which the latter filed a motion to dismiss the appeal on the ground that said appointment— a reinstatement virtually,—is already a compliance with the appealed judgment and the case should therefore be considered closed. The Court of Appeals denied the motion, but, upon discovering that purely questions of law are involved elevated the appeal to this Court.

The question before us is: was petitioner's separation from the service due to lack of civil service eligibility (although he had already taken the first grade examination but had not received the results thereof), to give way to the promotional appointment of another who is an eligible, legal? It is not controverted, that the petitioner was not a civil service eligible when he was appointed Acting Chief of the Legal Investigation Section of the Philippine Veterans Board and that his appointment was temporary and therefore governed by section 632 of the Revised Administrative Code which provides:

"Sec. 682. Temporary and emergency employees.—Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to competitive position in any case, except when the public interests 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; PROVIDED, That in the case of teachers such temporary appointment may be authorized to continue for a period of not exceeding one school semester, or until eligibles who meet the desired qualifications are certified for employment, but not sooner than the beginning of a school semester. Violation of these provisions will render such chief of the bureau or office responsible for the payment of salary to such person employed contrary to law as hereinafter provided. It shall be the duty of the Commissioner of Civil Service to provide a register of eligibles as soon as practicable prior to the expiration of the period of temporary employment."

The foregoing provision is explicit on the term of a temporary, namely, three months. The petitioner should have ceased in office as Chief of the Legal Investigation Section of the Philippine Veterans Board three months after his appointment on October 1, 1949. After the expiration, of said period, he could have been removed at will by the appointing power; his continuance thereafter as a temporary employee was « only an extension of grace. We

have already upheld the "legality of such kind of dismissal in the case of Leonilo Pafia, et al. vs. City Mayor Medina, et al., (94 Phil., 103; 50 Off. Gaz., 146) when we said:

"In accordance with Section 682 of the Revised Administrative I Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than 3 months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for periods of 3 months and not more. (Citing case of Orais, et al. vs. Ribo et al., L-4945, October 28, 1953.)"

In the case at bar the petitioner was impliedly dismissed by the appointment of an eligible to the position in controversy.

"Sec. 186. Removal by Act of Appointing Successor—The general rule seems to be that where an officer may be removed by a superior officer at the latter's pleasure, the act of removal is accomplished merely by the appointing of another officer in his place, so far as the officer himself is concerned, but in order to render the removal effective in all cases, the incumbent must be notified.

"Thus, where the law gives a court power of appointing its own clerks and does not prescribe any form in which this shall be done or in which an appointee may be removed, the mere appointment of a successor would, per se, be a removal of the prior incumbents, so far at least as his rights were concerned. Similarly, it has been held that express removal from office is not necessary to deprive the secretary of a mayor of the right to the salary, where he holds his position only during the mayor's pleasure, and a new secretary has been appointed and assumed the duties of the office." (43 Am. Jur. 33-34.)

Petitioner's claim that after becoming a civil service eligible on September 5, 1951, he was entitled to a permanent appointment to the position from which he was removed, is not sanctioned by any law or regulation. The power to appoint is in essence discretionary on the part of the proper authority, in this case the head of the department. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified for any competitive position in the Civil Service. Mere certification as a civil service eligible does not amount to an appointment. The Civil Service Commission does not insure any appointment; it only certifies an eligible to be possessed of the qualification as required for a position classified under its rules. (19 Am. & Eng. Ecy. Law 423; Hurd's Rev. St. 1909, c. 24a.)

In cases decided by American courts, it had been held that a temporary appointment can never ripen into one of permanence and that the acceptance of a temporary appointment does not preclude the appointing power from all opportunity to select an employee whose position is to be permanent. (Darling vs. McGuire, 129 N. Y. Supp. 385; People vs. Escannell, 66 N. Y. Supp. 182.)

Petitioner's removal from the service effective at the close of office hours on August 3, 1951, being legal, he is not entitled to the emoluments thereof after said date.

Wherefore, the appealed decision is hereby reversed and the petition for mandamus instituted by the petitioner dismissed. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A.f BavMsta Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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