

FELIPE B. PAGKANLUNGAN, PETITIONER AND APPELLANT, VS. HON. MANUEL DE LA FUENTE, AS MAYOR, CITY OF MANILA; HON. MARCELINO SARMIENTO, AS TREASURER, CITY OF MANILA; AND HON. AQUILI...

G.R. No. L-4364. October 07, 1952

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Manila denying a petition for a writ of prohibition and mandamus filed by Felipe B. Pagkanlungan against the City Mayor, City Treasurer, and Assistant City Treasurer, of Manila.

The facts which are not disputed are as follows:

Petitioner is a Civil Service employee of the Market Division, City Treasurer's Office of Manila. For some irregularities allegedly committed by him in office, he was ordered on October 25, 1949, by the City Treasurer to submit within 72 hours a written answer to a set of charges filed against him. Although he had complied with the said order in due time, nothing was heard about the case from the City Treasurer. However, six months later the respondent Mayor required him again to answer and explain the same charges, and ordered at the same time his suspension, pending the investigation of the said charges. Again nothing was done about these charges, notwithstanding the lapse of six months. So, he applied for reinstatement to his position, on the ground that the City Mayor has no power, under the law, to investigate City Officers and employees, following the ruling enunciated by the Supreme Court in the Francia-Subido case. This petition was denied by the respondent Mayor, on the ground that the above-mentioned ruling does not apply to him.

In the meantime the City Treasurer ordered his assistant, who is the chairman of the Anti-graft and Corruption Committee of his Office, to comply with the Mayor's order, and asked the petitioner to submit to an investigation by the said Committee, on Sept. 4, 1950. Forthwith the petitioner filed an appeal to the Secretary of the Interior from the Mayor's order, but without awaiting the result thereof, he filed this petition.

The ruling in the case of Francia vs Subido,[*] 47 Off. Gaz., (No. 12, Supp.) 296, does not apply to the herein petitioner, because unlike the City Auditor the petitioner is an employee appointed by the Mayor. There, the respondent as chief of the Division of Investigation in the office of the City Mayor had no power to investigate an officer or employee not appointed by the Mayor and could not exercise the powers and perform the duties vested in the City Fiscal. Here, the Mayor is clothed with the authority and power to investigate the petitioner who is an employee not appointed by the President of the Philippines. Section 11 (e) of Rep. Act No. 409, the Charter of the City of Manila which took effect on 18 June 1949, vests in the Mayor the power and duty "to see that executive officers and employees of the city properly discharge their respective duties" and section 22 thereof empowers him to suspend and remove, subject to appeal to the Secretary of the Interior, any city officer or employee not appointed by the President of the Philippines and to recommend to the latter the suspension or removal of any city

officer appointed by him. The authority and power to make an inquiry or to conduct an investigation, to the end that the power to suspend and remove expressly granted may be justly and fairly exercised, is implied in the power expressly granted. Section 38 of Republic Act No. 409, which provides that the City Fiscal is empowered to investigate any neglect or misconduct in office brought to his knowledge and to report to the Mayor thereon, does not deprive the latter of the authority and power to conduct an investigation under section 22 of the same Act. The powers vested in the Mayor and the City Fiscal may coexist.

Our attention has not been called to nor have we found any statute, executive order or regulation promulgated pursuant to law, which makes it the duty of the suspending officer to reinstate a suspended subordinate officer or employee after two months of suspension and to pay or to order the salary paid to the latter. Section 695 of the Revised Administrative Code, as amended by Com. Acts Nos. 177 and 598, which provides that the Commissioner of Civil Service (now the City Mayor) "may, for neglect of duty or violation of reasonable office regulations, * * * remove any subordinate officer or employee from the service, suspend him without pay for not more than two months * * *" contemplates a final action by the Commissioner (Mayor) after inquiry and has no reference to limitation of the period of suspension of the suspended subordinate officer or employee, as found in section 2272 of the same Code, as amended, dealing with suspension of members of the municipal police. Section 260 of the same Code does not limit the suspension of the payment of salary to two months but expressly provides that during suspension the salary shall not be paid, subject to "the application of the disciplinary provisions of section six hundred and ninety-five hereof."

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

* 87 Phil., 100.

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