

SILVESTRE CUÑADO, PETITIONER AND APPELLANT, VS. DAVID GAMUS, MAYOR OF MABINI, DOROTEO MONISA, MUN. TREASURER OF MABINI, AND PACIFICO RUIZ, PROV. AUDITOR, RESPONDENTS AND APPELLA...*G.R. Nos. L-16782-83. May 30, 1963*

Ponente: PAREDES, J.

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In Case G.R. No. L-16782 (Mandamus), the following are gathered from the stipulation of facts, Exhibit X-l.

Prior to January 18, 1956, Silvestre Cuñado was extended a permanent appointment as Chief of Police of Mabini, Bohol. As a consequence of administrative charges filed against him, on January 19, 1956, he was suspended by the respondent Mayor David Gamus on the same date. On February 16, 1956, the Municipal Council of Mabini, rendered judgment, finding petitioner Silvestre Cuñado guilty of the charges, recommending his dismissal, and in pursuance thereof, on February 22, 1956, respondent Mayor Gamus, dismissed him from the service. Petitioner Cuñado appealed to the Commissioner of Civil Service, who exonerated him from the administrative charges and ordered his reinstatement, which Mayor Gamus did on April 17, 1957. A criminal case was filed in the CFI of Bohol for an offense identical to the administrative charges, in which the accused Cuñado was acquitted on March 15, 1956, and that another administrative case was also filed against Cuñado on April 1, 1956, for which he was suspended again, but later received his accrued salary for this second suspension (Exh. C).

The only question submitted for consideration before the lower court was whether or not petitioner Cuñado is entitled to receive his salary during his first suspension, from January 19, 1956 up to April 16, 1957. Respondent Gamus alleged that he refused to approve the voucher of petitioner Cuñado covering the said period, because the decision of the Commissioner of Civil Service did not authorize the payment of petitioner's back salary. The lower court rendered judgment ordering respondents Mayor of Mabini, Municipal Treasurer of Mabini and Provincial Auditor, to approve the salary voucher of petitioner Cuñado, covering the period from January 19, 1956 to April 16, 1957, and considering "that there is no proof that respondent Mayor acted in bad faith in refusing to approve petitioner's voucher, the action for damages filed against him is devoid of merit. On the other hand, petitioner's evidence is insufficient to constitute a basis of his demand for damages. Without costs."

In Case G. R. No. L-16783 (Mandamus), the following are gathered from the stipulation of facts:-

Petitioners Inocentes Vallecera and Cresenciano Asa, are veterans, but not service eligibles.

On August 1, 1951, Vallecera was appointed a temporary policeman of Mabini, Bohol, with a salary of P480.00 a year. On November 5, 1951, he was appointed Policy Corporal at P42.00 per month, but this was superseded by another appointment on the same day at P540.00 per annum, which was approved by the Civil Service Bureau on April 15, 1953, with this annotation: "authorized under Sec. 682 of the Revised Administrative Code, to continue until replaced by an eligible". On January 19, 1953, and other temporary appointment was extended to him, as

corporate and his salary was raised to P576.00 per annum. This appointment was approved by the Bureau of Civil Service, subject to Section 682 of the Rev. Adm. Code. On August 27, 1955, he was temporarily appointed a police corporal, and his salary was raised to P636.00, with the approval of the Civil Service Bureau, subject to the same section 682 of the Rev. Adm. Code.

On February 21, 1948, petitioner Asa, was appointed temporary policeman of Mabini, with a salary of P360.00 per annum. On January 1, 1953, another temporary appointment was extended to him as policeman, with a salary at P540.00 per annum. And still on August 27, 1955, another temporary appointment was extended to him as policeman, with a salary of P600.00 per annum.

In consequence of administrative charges filed against the two petitioners, they were suspended by the respondent Mayor Gamus. On January 16, 1956, the Mabini Municipal Council found the petitioners Vallecera and Asa, guilty of the administrative charges, and recommended their dismissal from the service, in pursuance of which, Mayor Gamus, on February 22, 1956, dismissed them. They appealed to the Commissioner of Civil Service, who exonerated them in a decision promulgated on February 13, 1957.

They were not reinstated. On the contrary, petitioner Vallecera was replaced by Amado Layong, a non-veteran and non-eligible, who in turn was replaced by the present incumbent policeman Adolfo Villamor, who is a veteran but a non-eligible. Petitioner Asa was first replaced by Canuto Tutor, a non-eligible veteran, who in turn was replaced by Paulino Tacal, also a non-eligible veteran and finally replaced by the present incumbent Saturnino Vallespin, who is non-eligible and non-veteran.

Petitioner Vallecera and Asa were also prosecuted of an offense identical to the administrative charges, and that on March 15, 1956, they were acquitted by the CFI of Bohol. The two petitioners raised the questions as to (1) whether or not they are veterans, but not Civil Service eligibles—who were temporarily appointed members of the Police force on August 27, 1955, can be replaced by persons who are not civil service eligibles, and (2) whether or not both petitioners are entitled to receive back salaries during the period of their separation from service.

The lower court rendered judgment, ordering the respondents Mayor and Municipal Treasurer of Mabini and the Provincial Auditor, to reinstate petitioners Vallecera and Asa to their former positions, "provided that present incumbents who replaced them have held said positions for a period of more than three months. The petitioners shall be entitled to the payment of their salaries during the entire period of their separation from service." The lower court explained that it refrained from ordering the immediate ouster of the incumbents because they were not made parties to the present case, and denied the award of damages, considering the absence of proof that respondent Mayor Gamus acted in bad faith in refusing to reinstate both petitioners. Without costs also.

Both parties appealed in both cases to the Court of Appeals, which certified said cases to Us, as the issues involved raise purely questions of law.

Cuñado, Vallecera and Asa appealed from the judgment, in so far as it held that the evidence of record is not sufficient to show that the respondent Mayor acted in bad faith, in refusing to approve petitioner Cuñado's voucher and reinstate petitioners Policemen Vallecera and Asa, dismissing, for this reason, petitioners' claim for damages.

Upon the other hand, the respondents submit that the lower court erred (1) In not finding that Cuñado has effectively abandoned his office, as not to entitle him to the payment of back salary upon his reinstatement; (2) In holding that Cuñado is entitled to his back salary during the period of his suspension; (3) In holding that respondent Mayor could be compelled by Mandamus to pay the said back salary, notwithstanding the non-appropriation of funds therefor by the Mabini Municipal Council, which was not impleaded as respondent;

(4) In ordering the reinstatement of petitioners Vallecera and Asa to their former positions, as Municipal Policemen, notwithstanding the fact that they were merely veterans and not Civil Service eligibles, and were simply temporary appointees to said positions, and (5) In holding that petitioners Vallecera and Asa are entitled to reinstatement and back salaries.

We will dispose, firstly, the appeal of petitioners. As stated in the resolution of the Court of Appeals certifying the case to this Court, "Petitioners do not dispute any fact found by the trial court, thus limiting their appeal, as may be stated, to a determination of the sufficiency of the evidence to prove bad faith on the part of respondent Gamus". The lower court, after delving into said question, said-

"Considering that there is no proof that the respondent mayor acted in bad faith in refusing to approve petitioner's (Cuñado's) voucher, the action for damages filed against him is devoid of merit. On the other hand, petitioner's evidence is insufficient to constitute a basis for his demand for damages."

* * * * *

"Considering that there is no proof that mayor David Gamus acted in bad faith in refusing to reinstate both petitioners (Vallecera and Asa), the action for damages filed against him is devoid of merit. On the other hand, petitioners evidence is insufficient to constitute a basis of their demand for damages."

We are bound by the above findings and conclusions, there being no clear showing that they are not supported by the evidence of record.

Regarding the refusal of Gamus to approve the voucher of Cuñado, the trial court states-

"Respondent David Gamus maintains that he refused to approve the voucher of petitioner Silvestre Cuñado covering the period from January 1956 to April 16, 1956 on the ground that the judgment of the Commissioner of Civil Service did not authorize the payment of petitioner's back salary."

Considering the above finding, We deduce that the Civil Service commissioner, neither authorized nor disauthorized the petitioners, to be paid of their back salaries. Respondent Mayor might have really been in the honest belief that he was not authorized to order such payment. At any rate, there was no clear indication that respondent acted with malice in his actions. We, therefore, hold that damages were correctly denied the petitioners, by the trial court.

The next point in discussion, is the appeal of respondents. It is contended that it was error for the lower court in not finding that Cuñado had abandoned his office, and in granting him back salaries for the period of his suspension. It is claimed that when the second administrative case was filed against said Cuñado, former Mayor Cadigal, representing Cuñado, allegedly stated before the Municipal Council that Cuñado was no longer a municipal employee, by virtue of the order of dismissal from the service, issued by respondent Municipal Mayor, in the first administrative case, and hence could not be the subject of a subsequent administrative action, as he became already a "civilian" after the said dismissal. The mere act, if true, of considering himself a civilian, did not constitute abandonment. After his exoneration from the first charge, the respondents wanted to subject him again to an investigation of a second charge, to the jurisdiction of which, he did not want to submit any longer. He "got bored", so to say. He might have abandoned his right to his reinstatement, for factually, he did not ask for it at all despite the fact that the Civil Service Commissioner, had ordered his reinstatement; but this attitude does not necessarily imply, that he had also abandoned his right to the back pay, which he is now claiming. It is true that a public office may be waived or may become vacant by abandonment, but it is no less true that the abandonment must be total, and under such circumstances, as clearly to indicate absolute relinquishment (*Summers vs. Ozaeta*, G.R. No. L-1534, Oct. 24, 1948; 81 Phil. 754). The present case, does not show that petitioner Cuñado had clearly relinquished his position as Chief of Police. In a number of cases, We have invariably sustained the right to

reinstatement and payment of back salaries of police officers, who are not suspended or removed for cause, pursuant to Rep. Act No. 557 (Abella vs. Rodriguez, 95 Phil., 289; 50 Off. Gaz., No. 7, p. 3039; People vs. Bautista, 96 Phil., 43; 50 Off. Gaz., No. 11, 5286, Nov. 1954).

It is argued that there exists no practical advantages to compel the respondents to approve the voucher for the back pay, because the Municipal Council of Mabini was not impleaded and no funds were appropriated therefor. It should be recalled, however, that all that the petitioner asked in this proceeding, was the approval of the voucher, which was within the power of the respondent to do, and if he refused, he could be compelled to do by mandamus. Mandamus is a remedy for official inaction. After the approval of the voucher, the matter of payment will be another story.

Last in Our discussion, is the right of Vallecera and Asa to reinstatement and back wages. It is evident from the stipulation of facts, that both Vallecera and Asa were appointed in "temporary capacity". Even on this score alone, their rights to back salaries and reinstatement topple. It has been repeatedly ruled that one who holds a temporary appointment has no fixed term of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause; and if he is non-eligible, the temporary appointment of another non-eligible is not prohibited (Quiatchon vs. Villanueva & City of Bacolod, 101 Phil., 989; Pana vs. City Mayor of Ozamis, G.R. No. L-5700; 50 Off. Gaz., 146; Orais, et al. vs. Ribo, 93 Phil, 985; 49 Off. Gaz. 5386; Montero, et al. vs. Castellanes, 59 Off. Gaz. No. 11 (March 18, 1963) 1741-1743). It is true that these two petitioners are veterans and in accordance with Rep. Act No. 65, as amended, and Rep. Act No. 1363, they are entitled to preferential rights over other appointees. In the case at bar, those who were appointed in the place of Vallecera were veterans, although the substitute of Asa is non-veteran and non-eligible. But these qualifications alone did not confer preferential rights to petitioners who although veterans, are non-eligible also. It is admitted that petitioners' temporary appointments were approved and/or authorized by the Civil Service under Sec. 682 of the Administrative Code, effective "until replaced by an eligible". Appointments under this section, however, "shall continue only for such period not exceeding three (3) 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". When the petitioners were dismissed from the service, because of the administrative charges against them, their appointments had already lapsed. Petitioners' right to hold their positions as temporary policemen, expired three months after their last appointments on August 27, 1955 or November 27, 1955 (Pana vs. City Mayor of Ozamis, G.R. No. L-5700; 50 Off. Gaz.. 146; Orais vs. Ribo, supra). Their dismissal took effect on February 22, 1956. Where a veteran's preferential right to appointment under Rep. Act No. 65 has lapsed at the time he is given a temporary appointment under Sec. 682 of the Rev. Adm. Code, he has no more standing than any other temporary appointee under Sec. 682, to object to being replaced by another temporary appointee (Inocente vs. Ribo, 94 Phil., 652; 50 Off. Gaz., 4853).

Again, under Rep. Act No. 1363 and Adm. Order No. 130-"it is not enough that one be a war veteran in order to enjoy preference in appointments in the service of the government. Among other things, such veteran must be certified as such by the Philippine Veterans Board, and must have qualified in an appropriate Civil Service examination, and shall have filed application for preference with the Commissioner of Civil Service" (Galon vs. Cordoba, G.R. No. L-11515, Nov. 29, 1958). As it was not shown that petitioners had complied with these requisites, they are not entitled to the payment of back salaries, as they did not have any such back or accrued salaries to speak of, in the first place.

While it is true that the Commissioner of Civil Service exonerated Vallecera and Asa in the administrative complaint, no mention was made regarding their reinstatement or right to back wages. On the contrary, the

decision of the Commissioner, pointed to the replacement of Vallecera and Asa at any time, by the appointing authority with other non-eligibles. Thus the Commissioner said-

"* * In view thereof and as evidence sufficient to sustain the charges in the instant case is found wanting, respondents-appellants Silvestre Cuñado, Inocentes Vallecera and Cresenciano Asa are hereby exonerated thereof. It may be stated, however, that as Messrs. Vallecera and Asa were appointed in pursuance of Section 682 of the Revised Administrative Code, as amended, they may be replaced at any time by the appointing authority concerned with other non-eligibles after the expiration of three months (Orais et al. vs. Ribo, 49 Off. Gaz., 5386) unless they are duly accredited veterans who are entitled to preferential appointment under Republic Act No. 65, as amended by Republic Act No. 1363."

WHEREFORE, in Case G.R. No. L-16782, "Silvestre Cunado vs. David Gamus, etc., et al., the decision appealed from is affirmed, without special pronouncement as to costs; in Case G.R. No. L-16783, "Inocentes Vallecera, et al., vs. David Gamus, etc., et al., the decision appealed from is reversed, and another entered, declaring that Vallecera and Asa are not entitled to reinstatement and/or payment of back salaries. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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